



Agriculture & Natural Resources Subcommittee

**Tuesday, March 18, 2014
12:30 PM
Reed Hall (102 HOB)**

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Natural Resources Subcommittee

Start Date and Time: Tuesday, March 18, 2014 12:30 pm
End Date and Time: Tuesday, March 18, 2014 02:30 pm
Location: Reed Hall (102 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 487 Agricultural Industry Certifications by Higher Education & Workforce Subcommittee, Raburn
HB 1049 Divers by Raschein
HB 1055 Onsite Sewage Treatment and Disposal Systems by Mayfield
HB 1113 Onsite Sewage Treatment and Disposal Systems by Edwards, Goodson
HB 1123 Aquatic Preserves by Porter
HB 1363 Vessel Safety by Van Zant

NOTICE FINALIZED on 03/14/2014 16:00 by Sims-Davis.Linda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 487 Agricultural Industry Certifications
SPONSOR(S): Higher Education & Workforce Subcommittee; Raburn and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	12 Y, 0 N, As CS	Thomas	Sherry
2) Agriculture & Natural Resources Subcommittee		Kaiser <i>JK</i>	Blalock <i>AFB</i>
3) Appropriations Committee			
4) Education Committee			

SUMMARY ANALYSIS

Current law requires the State Board of Education (state board) to work with Workforce Florida, Inc., to develop and adopt rules for implementing an industry certification process.

The bill requires the Department of Agriculture and Consumer Services (DACCS), in cooperation with the Institute of Food and Agricultural Science at the University of Florida and the College of Agriculture and Food Sciences at Florida Agriculture and Mechanical University, to annually provide to the state board and the Department of Education (DOE) information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List. The information and industry certification provided must be based on the best available data.

The bill defines industry certification as:

- A voluntary process through which students are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a time-limited credential that is nationally recognized and must be:
 - Within an industry that addresses a critical local or statewide economic need;
 - Linked to an occupation that is included in the workforce system's targeted occupation list; or
 - Linked to an occupation that is identified as emerging.

The bill requires the state board to use the expertise of DACCS to develop and adopt rules for implementing an industry certification process, and specifies that, for farm occupations, industry certification must demonstrate student skill proficiency and be based upon the best available data to address critical local or statewide economic needs.

The bill also requires the list of industry certifications approved by Workforce Florida, Inc., DACCS, and DOE to be published and updated annually.

The bill requires DOE to include DACCS in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Industry Certifications

Section 1003.492, F.S., requires the State Board of Education (state board) to work with Workforce Florida, Inc., to develop and adopt rules for implementing an industry certification process. The Department of Economic Opportunity (DEO) is required to define industry certification based upon the highest available national standards for specific industry certification to ensure student skill proficiency and to address emerging labor market and industry trends.¹

DEO currently defines industry certification as "a voluntary process, through which individuals are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills and competencies, resulting in the award of a time-limited credential that is nationally recognized and applicable to an occupation that is included in the workforce system's targeted occupation list or determined to be an occupation that is critical, emerging, or addresses a local need."²

The selection of industry certifications for academy courses and career-themed courses occurs in two phases. First, Workforce Florida, Inc. must identify industry certifications that meet the DEO definition and compile them into a comprehensive list.³ Second, the Department of Education (DOE) must:

- Review the comprehensive list;⁴
- Identify certifications that are academically rigorous and at least 150 hours in length;⁵
- Compile a preliminary list of industry certifications that qualify for additional weighted funding;⁶
- Consider district requests that industry certifications be added to the approved list;⁷ and
- Annually publish a final list.⁸

However, a regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certification based on high-skill, high-wage, and high-demanding job requirements in the regional economy.⁹

Workforce Florida, Inc.'s, comprehensive list includes 428 industry certifications.¹⁰ From this list, DOE has identified 201 industry certifications and 287 postsecondary industry certifications as funding-eligible for the 2013 - 2014 school year.¹¹ Most industry certifications require passage of a subject area

¹ Section 1003.492(2), F.S.

² Florida Department of Education, Division of Career and Adult Education, *Career and Professional Education Act CAPE*, at 1 (2012), available at <http://www.fldoe.org/workforce/pdf/CAPE-Act-TechAssist.pdf>.

³ Section 1003.492(2), F.S.; Rule 6A-6.0573(1)-(3), F.A.C.; A regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certification based on high-skills, high-wage, and high-demand job requirements in the regional economy.

⁴ Rule 6A-6.0573(3), F.A.C.

⁵ Rule 6A-6.0573(3)(b), F.A.C.

⁶ Rule 6A-6.0573(4), F.A.C.

⁷ Rule 6A-6.0573(4)(a) and (4)(b), F.A.C.

⁸ Rule 6A-6.0573(8), F.A.C.

⁹ Section 1003.492(2), F.S.

¹⁰ Workforce Florida, Inc. Career and Professional Education (CAPE), *2013-14 Comprehensive Industry Certification List*, <http://careersourceflorida.com/wp-content/uploads/2014/02/2013-14ComprehensiveCondensedFINAL.pdf>.

¹¹ Rule 6A-6.0573(6), F.A.C. The Industry Certification Funding List is incorporated by reference in the rule. See also Florida Department of Education, Division of Career and Adult Education, *2013-14 Final Industry Certification Funding List* (2013), available at www.fldoe.org/workforce/fcpea/pdf/1314icfl.pdf.

examination and some combination of work experience, educational attainment, or on-the-job training. DOE has approved industry certification in such career fields as information technology, automotive and aircraft mechanics, welding, and nursing. Certifying entities include Adobe Systems, Apple Computer, Inc., Hewlett-Packard, Microsoft Corporation, the National Institute for Automotive Services Excellence, the American Welding Society, the Federal Aviation Administration, and the Florida Department of Health.¹²

Industry certifications on the final approved list are eligible for additional weighted funding through the Florida Education Finance Program (FEFP).¹³ The list may include both industry certifications that are achievable in a secondary education program and those that have requirements, such as minimum age, grade-level, diploma or degree, or post-graduation work experience of at least 12 months, that make it impossible for the student to obtain full certification while in a public secondary school program. Funding industry certifications in which full certification cannot be achieved in a secondary program allow students to begin working toward these certifications while in high school, without having to fulfill all requirements before graduation.¹⁴

DOE must also collect student achievement and performance data in industry-certified career education programs and career-themed courses and must work with Workforce Florida, Inc., in the analysis of collected data. The data collection and analyses must examine the performance of participating students over time. Performance factors must include, but are not limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, industry certification, and employer satisfaction.¹⁵

Effect of Proposed Change

The bill requires the Department of Agriculture and Consumer Services (DACS), in cooperation with the Institute of Food and Agricultural Science at the University of Florida and the College of Agriculture and Food Sciences at Florida Agriculture and Mechanical University, to annually provide to the state board and DOE information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List. The information and industry certification provided must be based on the best available data.

The bill defines industry certification as:

- A voluntary process through which students are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a time-limited credential that is nationally recognized and must be:
 - Within an industry that addresses a critical local or statewide economic need;
 - Linked to an occupation that is included in the workforce system's targeted occupation list; or
 - Linked to an occupation that is identified as emerging.

The bill requires the state board to use the expertise of DACS to develop and adopt rules for implementing an industry certification process, and specifies that, for farm occupations, industry certification must demonstrate student skill proficiency and be based upon the best available data to

¹² See Florida Department of Education, Division of Career and Adult Education, *Industry Certification Descriptions*, <http://app1.fldoe.org/WEIndCert/Default.aspx> (last visited Mar. 12, 2014).

¹³ Section 1011.62(1)(p), F.S.; rule 6A-6.0573(3), F.A.C.

¹⁴ Section 1008.44(3), F.S. For industry certifications in which full certification cannot be achieved in a secondary program, the Commissioner of Education must differentiate the content, instructional, and assessment requirements for such industry certifications in determining funding. This allows students to work toward these certifications while in high school, without having to fulfill all requirements before graduation. *Id.*

¹⁵ Section 1003.492(3), F.S. A report of data on academies and career-themed courses must be submitted to the President of the Senate and Speaker of the House of Representatives by December 31, each year.

address critical local or statewide economic needs. The list of industry certifications approved by Workforce Florida, Inc., DACS, and DOE must be published and updated annually.

The bill requires DOE to include DACS in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses.

B. SECTION DIRECTORY:

Section 1: Amends s. 570.07, F.S., requiring the Department of Agriculture and Consumer Services to annually provide to the State Board of Education and the Department of Education industry certifications for farm occupations to be considered for placement on industry certification funding lists.

Section 2: Amends s. 1003.492, F.S., defining industry certification as part of career education programs; requiring the state board to adopt rules for implementing an industry certification process for farm occupations.

Section 3: Amends s. 1003.4935, F.S., conforming a cross-reference.

Section 4: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require municipalities or counties to expend funds or to take any action requiring the expenditure of funds, reduce the authority that municipalities or counties have to raise

revenues in the aggregate, or reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill requires the state board to include the expertise of the Department of Agriculture and Consumer Services for implementing an industry certification process. The state board would have to amend the current industry certification process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Higher Education & Workforce Subcommittee reported HB 487 favorably as a committee substitute. There was a strike-all amendment to the bill that:

- Requires DACS, in cooperation with the Institute of Food and Agricultural Science at the University of Florida and the College of Agriculture and Food Sciences at Florida Agriculture and Mechanical University, to annually provide to the state board and DOE information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List.
- Provides a definition of industry certification.
- Requires the state board to use the expertise of DACS to develop and adopt rules for implementing an industry certification process.
- Requires DOE to include DACS in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses

This analysis is drafted to the committee substitute as passed by the Higher Education & Workforce Subcommittee.

1 A bill to be entitled
 2 An act relating to agricultural industry
 3 certifications; amending s. 570.07, F.S.; requiring
 4 the Department of Agriculture and Consumer Services to
 5 annually provide to the State Board of Education and
 6 the Department of Education information and industry
 7 certifications for farm occupations to be considered
 8 for placement on industry certification funding lists;
 9 amending s. 1003.492, F.S.; defining industry
 10 certification as part of career education programs;
 11 requiring the state board to adopt rules for
 12 implementing an industry certification process for
 13 farm occupations; amending s. 1003.4935, F.S.;
 14 conforming a cross-reference; providing an effective
 15 date.

16
 17 Be It Enacted by the Legislature of the State of Florida:
 18

19 Section 1. Subsection (43) is added to section 570.07,
 20 Florida Statutes, to read:

21 570.07 Department of Agriculture and Consumer Services;
 22 functions, powers, and duties.—The department shall have and
 23 exercise the following functions, powers, and duties:

24 (43) In cooperation with the Institute of Food and
 25 Agricultural Sciences at the University of Florida and the
 26 College of Agriculture and Food Sciences at the Florida

27 Agricultural and Mechanical University, to annually provide to
 28 the State Board of Education and the Department of Education
 29 information and industry certifications for farm occupations to
 30 be considered for placement on the Industry Certification
 31 Funding List and the Postsecondary Industry Certification
 32 Funding List pursuant to s. 1008.44. Information and industry
 33 certifications provided by the department must be based upon the
 34 best available data.

35 Section 2. Section 1003.492, Florida Statutes, is amended
 36 to read:

37 1003.492 Industry-certified career education programs.—

38 (1) Secondary schools offering career-themed courses, as
 39 defined in s. 1003.493(1)(b), and career and professional
 40 academies shall be coordinated with the relevant and appropriate
 41 industry to prepare a student for further education or for
 42 employment in that industry.

43 (2) Industry certification as used in this section is a
 44 voluntary process through which students are assessed by an
 45 independent, third-party certifying entity using predetermined
 46 standards for knowledge, skills, and competencies, resulting in
 47 the award of a time-limited credential that is nationally
 48 recognized and must be at least one of the following:

49 (a) Within an industry that addresses a critical local or
 50 statewide economic need;

51 (b) Linked to an occupation that is included in the
 52 workforce system's targeted occupation list; or

53 (c) Linked to an occupation that is identified as
 54 emerging.

55 (3) ~~(2)~~ The State Board of Education shall use the
 56 expertise of Workforce Florida, Inc., and the Department of
 57 Agriculture and Consumer Services to develop and adopt rules
 58 pursuant to ss. 120.536(1) and 120.54 for implementing an
 59 industry certification process.

60 (a) For nonfarm occupations, industry certification shall
 61 be ~~defined by the Department of Economic Opportunity,~~ based upon
 62 the highest available national standards for specific industry
 63 certification, to ensure student skill proficiency and to
 64 address emerging labor market and industry trends. A regional
 65 workforce board or a school principal may apply to Workforce
 66 Florida, Inc., to request additions to the approved list of
 67 industry certifications based on high-skill, high-wage, and
 68 high-demand job requirements in the regional economy. ~~The list~~
 69 ~~of industry certifications approved by Workforce Florida, Inc.,~~
 70 ~~and the Department of Education shall be published and updated~~
 71 ~~annually by a date certain, to be included in the adopted rule.~~

72 (b) For farm occupations submitted pursuant to s. 570.07,
 73 industry certification shall demonstrate student skill
 74 proficiency and be based upon the best available data to address
 75 critical local or statewide economic needs.

76 (4) The list of industry certifications approved by
 77 Workforce Florida, Inc., the Department of Agriculture and
 78 Consumer Services, and the Department of Education shall be

79 published and updated annually by a date certain, to be included
 80 in the adopted rule.

81 (5)~~(3)~~ The Department of Education shall collect student
 82 achievement and performance data in industry-certified career
 83 education programs and career-themed courses and shall work with
 84 Workforce Florida, Inc., and the Department of Agriculture and
 85 Consumer Services in the analysis of collected data. The data
 86 collection and analyses shall examine the performance of
 87 participating students over time. Performance factors shall
 88 include, but not be limited to, graduation rates, retention
 89 rates, Florida Bright Futures Scholarship awards, additional
 90 educational attainment, employment records, earnings, industry
 91 certification, and employer satisfaction. The results of this
 92 study shall be submitted to the President of the Senate and the
 93 Speaker of the House of Representatives annually by December 31.

94 Section 3. Subsection (3) of section 1003.4935, Florida
 95 Statutes, is amended to read:

96 1003.4935 Middle grades career and professional academy
 97 courses and career-themed courses.—

98 (3) Beginning with the 2012-2013 school year, if a school
 99 district implements a middle school career and professional
 100 academy or a career-themed course, the Department of Education
 101 shall collect and report student achievement data pursuant to
 102 performance factors identified under s. 1003.492(5) ~~1003.492(3)~~
 103 for students enrolled in an academy or a career-themed course.

104 Section 4. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee
3 Representative Porter offered the following:

4

5 **Amendment**

6 Remove line 47 and insert:

7 the award of a credential that is nationally

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1049 Divers
SPONSOR(S): Raschein
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Filaroski <i>CF</i>	Blalock <i>MR</i>
2) State Affairs Committee			

SUMMARY ANALYSIS

Recreational diving is enjoyed 12 months of the year in Florida and has proven to be an economic benefit to the state. Florida provides many unique and exclusive opportunities for diving, including the only natural living coral reef in North America off the coast of South Florida and the Florida Keys. These unique features of Florida have made the state one of the most popular dive destinations for divers around the world for decades.

Current law requires divers to display a "divers-down flag," a square or rectangular red flag with a white stripe, in the area where the diving occurs. Divers are required to conduct their diving activities within a certain distance to the flag, and vessels are required maintain a certain distance from the flags in most instances. Any violation of the law results in a noncriminal infraction punishable by a \$50 civil penalty and a requirement that the person appears before the county court. Vessel operators receive knowledge of the divers-down flag requirements from boater education and safety courses, as diver safety is a required component of these courses.

The bill amends current law to give divers the option to display a "divers-down buoy" instead of a divers-down flag that contains the same universal divers-down symbol. Under the bill, a diver must display either the divers-down flag or the divers-down buoy, or both, when diving. The bill also requires boater education and safety courses to include a component regarding divers-down buoys, along with the divers-down flag component required in current law.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Recreational diving is enjoyed 12 months of the year in Florida and has proven to be an economic benefit to the state. Florida provides many unique and exclusive opportunities for diving, including the only natural living coral reef in North America off the coast of South Florida and the Florida Keys. These unique features of Florida have made the state one of the most popular dive destinations for divers around the world for decades.¹

Section 327.331, F.S., requires divers to prominently display a "divers-down flag," a square or rectangular red flag with a diagonal white stripe,² in the area where the diving occurs.³ Divers are required to make "reasonable efforts" to stay within 100 feet of the flag on rivers, inlets, and navigational channels, and vessels are required to maintain a distance of at least 100 feet from any such flag.⁴ On all waters that are not rivers, inlets, or navigational channels, this "100 feet requirement" becomes a 300 feet requirement.⁵ Additionally, vessels (other than law enforcement vessels) that do encroach upon the 100- or 300-foot "restricted area" must proceed "no faster than is necessary to maintain headway and steerageway."⁶ Divers are required to display the divers-down flag in a manner that does not "unreasonably constitute a navigational hazard," except in case of emergency,⁷ and they must lower the flag once all divers are aboard or ashore.⁸

Any violation of this section results in a noncriminal infraction (insofar as it does not violate s. 327.33, F.S., relating to reckless and careless operation of a vessel) punishable as provided in s. 327.73, F.S.⁹ Pursuant to that section, a person cited for violating the divers-down flag requirements must appear before the county court and pay a \$50 civil penalty.

To facilitate compliance with s. 327.331, F.S., by persons operating vessels, boater education and boater safety courses must include a component regarding diving vessels, awareness of divers in the water, divers-down flags, and the divers-down flag requirements in s. 327.331, F.S.¹⁰

Violations of the divers-down flag laws are relatively infrequent. In fiscal year 2012-13, only 225 violations of divers-down flag-related rules occurred. Incidents involving a boat colliding with a diver who is using a divers-down flag and staying within reasonable distance of the flag are also infrequent. Between 2009 and 2013, only 13 boating accidents were reported in which a diver or a snorkeler was struck by a boat and visibility of a divers-down flag may have been a contributing factor. These accidents resulted in 2 deaths and 13 major injuries.¹¹

¹ Florida Fish and Wildlife Conservation Commission analysis, on file with staff.

² s. 327.331(1)(c), F.S. The size of the flag varies, dependent on whether it is displayed from a vessel (in which case it shall be at least 20 inches by 24 inches) or a buoy or float towed by the diver (12 inches by 12 inches). s. 327.331(1)(c)4., F.S.

³ s. 327.331(2), F.S.

⁴ s. 327.331(4), F.S.

⁵ s. 327.331(5), F.S.

⁶ s. 327.331(6), F.S.

⁷ s. 327.331(3), F.S.

⁸ s. 327.331(7), F.S.

⁹ s. 327.331(8), F.S.

¹⁰ s. 327.395(3), F.S.

¹¹ *Id.*

Effect of Proposed Changes

Section 1.

The bill amends s. 327.331, F.S., to allow a "divers-down buoy" to be displayed in the area in which diving occurs in place of a divers-down flag (though they may not be displayed onboard a vessel, unlike divers-down flags). Thus, divers may choose whether to display a divers-down flag, a divers-down buoy, or both when they engage in diving activities. The bill defines a divers-down buoy as "a buoyant device, other than a vessel, which displays a divers-down symbol of at least 12 inches by 12 inches on four flat sides, which is prominently visible on the water's surface." The bill also creates a definition for "divers-down symbol" that is the same as the rectangular or square red symbol with a white diagonal stripe that is required on divers-down flags under current law. To accommodate the new "divers-down symbol" definition proposed by this bill, "divers-down flag" is redefined as a flag that "must consist of a divers-down symbol on each side." Accordingly, the bill requires a diver to display a divers-down symbol either on a flag or buoy in order to be in compliance with the section. In certain situations, the use of a divers-down buoy on the water may be more visible to passing boaters than a flag displayed on a diver's boat. The bill gives divers the option to use the divers-down buoy for warning others that there are nearby divers in the water.

Section 2.

The bill amends s. 327.395, F.S., to include a component on divers-down buoys (in addition to the component regarding divers-down flags required under current law) within boater education and boater safety courses.

Section 3.

The bill makes a conforming change to s. 327.73, F.S., pertaining to noncriminal infractions, to specify that s. 327.331, F.S., relates to divers-down buoys in addition to divers-down flags.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.331, F.S., relating to the displaying of divers-down flags while conducting diving activities.

Section 2. Amends s. 327.395, F.S., relating to boater education and safety courses.

Section 3. Amends s. 327.73, F.S., relating to the noncriminal infractions imposed on violators of vessel laws.

Section 4. Provides an effective date of July 1, 2014..

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because the bill only adds an additional method divers may use to comply with the requirement to display a symbol when they are participating in diving activities, the bill does not require divers to purchase additional items to continue diving activities. The bill may provide a financial benefit to private companies that manufacture buoys by expanding the market to divers who must display a symbol when they are diving.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to divers; amending s. 327.331, F.S.;
 3 defining the terms "divers-down buoy" and "divers-down
 4 symbol"; revising the definition of "divers-down
 5 flag"; requiring all divers to prominently display a
 6 divers-down flag or buoy in the area in which the
 7 diving occurs; requiring vessel operators encountering
 8 divers-down buoys to take specified actions;
 9 prohibiting a divers-down buoy from being used or
 10 displayed onboard a vessel; conforming provisions to
 11 changes made by the act; making technical changes;
 12 amending ss. 327.395 and 327.73, F.S.; conforming
 13 provisions to changes made by the act; providing an
 14 effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 327.331, Florida Statutes, is amended,
 19 and subsection (1) of that section is reordered, to read:
 20 327.331 Divers; definitions; divers-down flag or buoy
 21 required; obstruction to navigation of certain waters; penalty.-
 22 (1) As used in this section:
 23 (a) "Diver" means a ~~any~~ person who is wholly or partially
 24 submerged in the waters of the state and is equipped with a face
 25 mask and snorkel or underwater breathing apparatus.
 26 (e) ~~(b)~~ "Underwater breathing apparatus" means any

27 apparatus, whether self-contained or connected to a distant
 28 source of air or other gas, whereby a person wholly or partially
 29 submerged in water is enabled to obtain or reuse air or any
 30 other gas or gases for breathing without returning to the
 31 surface of the water.

32 (b) "Divers-down buoy" means a buoyant device, other than
 33 a vessel, which displays a divers-down symbol of at least 12
 34 inches by 12 inches on four flat sides, which is prominently
 35 visible on the water's surface when in use.

36 (c) "Divers-down flag" means a flag that meets the
 37 following specifications:

38 1. The flag must be square or rectangular. If rectangular,
 39 the length must not be less than the height, or more than 25
 40 percent longer than the height. The flag must have a wire or
 41 other stiffener to hold it fully unfurled and extended in the
 42 absence of a wind or breeze.

43 2. The flag must consist of a divers-down symbol on each
 44 side with ~~be red with~~ a white diagonal stripe that begins at the
 45 top staff-side of the flag and extends diagonally to the lower
 46 opposite corner. ~~The width of the stripe must be 25 percent of~~
 47 ~~the height of the flag.~~

48 3. The minimum size for any divers-down flag displayed on
 49 a buoy or float towed by the diver is 12 inches by 12 inches.
 50 The minimum size for any divers-down flag displayed from a
 51 vessel or structure is 20 inches by 24 inches.

52 4. Any divers-down flag displayed from a vessel must be

53 displayed from the highest point of the vessel or such other
 54 location which provides that the visibility of the divers-down
 55 flag is not obstructed in any direction.

56 (d) "Divers-down symbol" means a rectangular or square red
 57 symbol with a white diagonal stripe. If rectangular, the length
 58 must not be less than the height or more than 25 percent longer
 59 than the height. The width of the stripe must be 25 percent of
 60 the height of the symbol.

61 (2) All divers must prominently display a divers-down flag
 62 or buoy in the area in which the diving occurs, other than when
 63 diving in an area customarily used for swimming only. A divers-
 64 down buoy may not be used or displayed onboard a vessel.

65 (3) A diver or group of divers may not ~~No diver or group~~
 66 ~~of divers shall~~ display one or more divers-down flags or buoys
 67 on a river, inlet, or navigation channel, except in case of
 68 emergency, in a manner which shall unreasonably constitute a
 69 navigational hazard.

70 (4) Divers shall make reasonable efforts to stay within
 71 100 feet of ~~a the~~ divers-down flag or buoy on rivers, inlets,
 72 and navigation channels. A ~~Any~~ person operating a vessel on a
 73 river, inlet, or navigation channel must make a reasonable
 74 effort to maintain a distance of at least 100 feet from any
 75 divers-down flag or buoy.

76 (5) Divers must make reasonable efforts to stay within 300
 77 feet of ~~a the~~ divers-down flag or buoy on all waters other than
 78 rivers, inlets, and navigation channels. A ~~Any~~ person operating

79 a vessel on waters other than a river, inlet, or navigation
 80 channel must make a reasonable effort to maintain a distance of
 81 at least 300 feet from any divers-down flag or buoy.

82 (6) A ~~Any~~ vessel other than a law enforcement or rescue
 83 vessel that approaches within 100 feet of a divers-down flag or
 84 buoy on a river, inlet, or navigation channel, or within 300
 85 feet of a divers-down flag or buoy on waters other than a river,
 86 inlet, or navigation channel, must proceed no faster than is
 87 necessary to maintain headway and steerageway.

88 (7) A ~~The~~ divers-down flag or buoy may not be displayed
 89 ~~must be lowered~~ once all divers are aboard or ashore. A ~~No~~
 90 person may not operate any vessel displaying a divers-down flag
 91 unless the vessel has one or more divers in the water.

92 (8) Except as provided in s. 327.33, a ~~any~~ violation of
 93 this section is ~~shall be~~ a noncriminal infraction punishable as
 94 provided in s. 327.73.

95 Section 2. Subsection (3) of section 327.395, Florida
 96 Statutes, is amended to read:

97 327.395 Boating safety identification cards.—

98 (3) Any commission-approved boater education or boater
 99 safety course, course-equivalency examination developed or
 100 approved by the commission, or temporary certificate examination
 101 developed or approved by the commission must include a component
 102 regarding diving vessels, awareness of divers in the water,
 103 divers-down flags and buoys, and the requirements of s. 327.331.

104 Section 3. Paragraph (u) of subsection (1) of section

HB 1049

2014

105 | 327.73, Florida Statutes, is amended to read:

106 | 327.73 Noncriminal infractions.—

107 | (1) Violations of the following provisions of the vessel
108 | laws of this state are noncriminal infractions:

109 | (u) Section 327.331, relating to divers-down flags and
110 | buoys, except for violations meeting the requirements of s.
111 | 327.33.

112 | Section 4. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1055 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): Mayfield
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1306

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Renner <i>RR</i>	Blalock <i>AFB</i>
2) Health Care Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law requires the Department of Health (DOH) to regulate onsite sewage treatment disposal systems (OSTDSs), which include septic tanks. Generally, OSTDSs are used to treat and dispose of relatively small volumes of wastewater from an individual home or business. Central sewer systems and treatment facilities are used to dispose of and treat wastewater from multiple homes and businesses. The sewers collect municipal wastewater from homes, businesses, and industries and deliver it to facilities for treatment before it is discharged to waterbodies or land, or reused. An alternative to OSTDSs and wastewater collection systems is a combined system. In a combined system, wastewater flows into a conventional septic tank to capture solids. The liquid effluent flows to a holding tank containing a pump and control device. The effluent is then pumped and transferred for treatment.

The bill provides that it is the intent of the Legislature that where a publicly owned or investor-owned sewer system is available, DOH must issue permits for the construction of a combined system when connection to the publicly owned or investor-owned sewer system results in the use of any part of an OSTDS.

The bill defines the term "combined system" to mean a system that includes any part of an OSTDS that is also connected to a DEP-permitted publicly owned or investor-owned sewer system.

The bill requires DOH to establish and collect fees for services provided with respect to combined systems and to approve the installation of a combined system when connection to a publicly owned or investor-owned sewer system results in the use of any part of an OSTDS.

The bill prohibits a person from constructing, repairing, modifying, abandoning, or operating a combined system without first obtaining a permit from DOH. The issuance of a permit for a combined system must be contingent upon approval of the receiving force main system by DEP.

The bill also prohibits a municipality or political subdivision from issuing a building or plumbing permit for any building that requires the use of a combined system, unless the owner or builder has received a construction permit for the system from DOH. In addition, a combined system must be approved by DOH before a building or structure may be occupied.

Lastly, the bill specifies that a DOH-issued and approved permit for the installation, modification, or repair of a combined system transfers with the title to the property in a real estate transaction. The title may not be encumbered at the time of transfer by new permit requirements for a combined system that differs from the permitting requirements in effect at the time the system was permitted, modified, or repaired.

The bill has a potentially insignificant positive fiscal impact on DOH resulting from increased permit fees for combined systems. However, according to DOH, costs may be incurred to issue permits and conduct inspections of these combined systems because revenues from fees cover only 60 percent of the program costs. The bill has a potentially insignificant positive fiscal impact on local government-owned utilities that, under certain circumstances, will not have to put in sewer pipes to connect to properties that currently have septic tanks.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Onsite systems

Generally, onsite sewage treatment and disposal systems (OSTDSs) are used to treat and dispose of relatively small volumes of wastewater. An OSTDS is a system that contains:

- A standard subsurface, filled, or mound drainfield system;
- An aerobic treatment unit;
- A graywater system tank;
- A laundry wastewater system tank;
- A septic tank;
- A grease interceptor;
- A pump tank;
- A solids or effluent pump;
- A waterless, incinerating, or organic waste-composting toilet; or
- A sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system.¹

The term also includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works permitted by the Department of Environmental Protection (DEP).²

A septic tank is a watertight receptacle constructed to promote separation of solid and liquid components of wastewater, to provide limited digestion of organic matter, to store solids, and to allow clarified liquid to discharge for further treatment and disposal into a drainfield.³ A drainfield is defined as a system of open-jointed or perforated piping, approved alternative distribution units, or other treatment facilities designed to distribute effluent for filtration, oxidation, and absorption by the soil within the zone of aeration.⁴

Central Wastewater Collection

A central wastewater collection system consists of central sewers that collect municipal wastewater from homes, businesses, and industries and deliver it to a wastewater treatment facility before it is discharged to waterbodies or land, or reused.⁵ Conventional wastewater collection systems transport sewage from homes or other sources by gravity flow through buried piping systems to a central treatment facility.⁶

An alternative to conventional wastewater collection systems is pressure sewers.⁷ Pressure sewers differ from conventional gravity collection systems because they break down large solids in the

¹ Section 381.0065(2)(k), F.S.

² Section 381.0065(2)(k), F.S.

³ Chapter 64E-6.002(49), F.A.C.

⁴ Chapter 64E-6.002(18), F.A.C.

⁵ Environmental Protection Agency, Primer for Municipal Wastewater Treatment Systems, September 2004, available at: water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf

⁶ Environmental Protection Agency Wastewater Technology Fact Sheet. On file with Agriculture & Natural Resources Subcommittee staff.

⁷ *Id.*

pumping station before they are transported through the collection system.⁸ These are typically used in areas that have high groundwater that could seep into the sewer, increasing the amount of wastewater to be treated.⁹

One type of pressure sewer system is the septic tank effluent pump system, also known as a combined system. In these combined systems, wastewater flows into a conventional septic tank to capture solids. The liquid effluent flows to a holding tank containing a pump and control device. The effluent is then pumped and transferred for treatment.¹⁰ According to the Environmental Protection Agency (EPA), retrofitting existing septic tanks in areas served by the combination of septic tanks and drainfield systems could present an opportunity for cost savings. However, a large number must be replaced or expanded over the life of the system because of insufficient capacity, deterioration of concrete tanks, or leaks.¹¹

State Regulation for OSTDS

Chapter 381, F.S., requires the Department of Health (DOH) to regulate OSTDSs. Pursuant to s. 381.0065(3), F.S., DOH must:

- Adopt rules;
- Perform application reviews and site evaluations, issue permits, and conduct inspections and complaint investigations relating to OSTDSs;
- Develop a comprehensive program to ensure that OSTDSs are sized, designed, constructed, installed, repaired, modified, abandoned, used, operated, and maintained to prevent groundwater contamination and surface water contamination and to preserve the public health;
- Grant variances in hardship cases;
- Permit the use of a limited number of innovative systems for a specific period when there is compelling evidence that the system will function properly and reliably;
- Issue annual operating permits;
- Establish and collect fees for services related to OSTDSs;
- Conduct enforcement activities;
- Provide or conduct education and training of DOH personnel, service providers, and the public regarding OSTDSs;
- Supervise research on, demonstration of, and training on the performance, environmental impact, and public health impact of OSTDSs in Florida;
- Approve the installation of individual graywater disposal systems in which blackwater is treated by a central sewerage system;
- Regulate and permit the sanitation, handling, treatment, storage, reuse, and disposal of byproducts from any OSTDS;
- Permit and inspect portable or temporary toilet services and holding tanks; and
- Regulate and permit maintenance entities for performance-based treatment systems and aerobic treatment unit systems.

Section 381.0065(4), F.S., prohibits any person from constructing, installing, modifying, abandoning, or repairing an OSTDS without first obtaining a DOH permit. DOH is prohibited from making the issuance of the permits contingent upon prior approval by DEP, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053, F.S., must be contingent upon receipt of any required coastal construction control line permit from DEP.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

DOH does not permit the use of an OSTDS in the following instances, unless DOH grants a variance from the prohibition:

- The estimated domestic sewage flow from the establishment is over 10,000 gallons per day (gpd);¹²
- The estimated commercial sewage flow from the establishment is over 5,000 gpd;¹³
- There is a likelihood that the system will receive toxic, hazardous, or industrial wastes;¹⁴
- A sewer system is available;¹⁵ or
- Any system or flow from the establishment is currently regulated by DEP.¹⁶

In 1983, DEP entered into an Interagency Agreement with DOH to coordinate the regulation of onsite sewage systems, septage and residuals, and marina pumpout facilities. This agreement sets up procedures for addressing interagency issues related to OSTDSs and central wastewater disposal and treatment facilities.¹⁷

Connection of Existing OSTDSs to a Central Sewer System

Section 381.00655(1), F.S., requires the owner of a properly functioning OSTDS to connect the OSTDS or the building's plumbing to an available publicly owned or investor-owned sewer system within 365 days after written notification by the owner of the publicly owned or investor-owned sewer system that the system is available for connection. An "available" publicly owned or investor-owned sewer system is a system capable of being connected to the plumbing of an establishment or residence that is not under a DEP moratorium and has adequate permitted capacity to accept the sewage to be generated by the establishment or residence.¹⁸ A publicly owned or investor-owned sewer system is authorized to waive the requirement of mandatory connection if it determines that such connection is not in the public interest due to public health considerations. In addition, a variance can also be granted to an owner of a performance-based OSTDS permitted by DOH as long as the OSTDS is functioning properly and satisfies the conditions of the operating permit.

Chapter 64E-6.011, F.A.C., requires the OSTDS to be abandoned after being connected to a sewer, and further use of the OSTDS is prohibited. However, continued use of the OSTDS is allowed if it is part of the sewer system under a DEP permit, creating a combined system. The OSTDS may also be converted to a cistern for non-potable uses. According to DOH and DEP, there is sufficient statutory authority in current law to permit and install a combined system. However, there are some uncertainties in the law related to the duties of the two agencies as they pertain to the installation and permitting of these systems.

Effect of Proposed Changes

The bill provides that it is the intent of the Legislature that where a publicly owned or investor-owned sewer system is available, DOH must issue permits for the construction of a combined system when connection to the publicly owned or investor-owned sewer system results in the use of any part of an OSTDS.

The bill defines the term "combined system" to mean a system that includes any part of an OSTDS that is also connected to a publicly owned or investor-owned sewer system permitted by DEP.

¹² Chapter 64E-6.008, F.A.C. DEP issues permits for systems that discharge more than 10,000 gpd. See Chapter 62-4, F.A.C.

¹³ DEP website on Septic Systems, available at <http://www.dep.state.fl.us/water/wastewater/dom/septic.htm>

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 381.0065(2)(a), F.S.

The bill requires DOH to establish and collect fees for services provided with respect to combined systems and to approve the installation of a combined system when connection to a publicly owned or investor-owned sewer system results in the use of any part of an OSTDS.

The bill prohibits a person from constructing, repairing, modifying, abandoning, or operating a combined system without first obtaining a permit from DOH. The issuance of a permit for a combined system must be contingent upon approval of the receiving force main system by DEP.

The bill also prohibits a municipality or political subdivision from issuing a building or plumbing permit for any building that requires the use of a combined system, unless the owner or builder has received a construction permit for the system from DOH. In addition, a combined system must be approved by DOH before a building or structure may be occupied.

Lastly, the bill specifies that a DOH-issued and approved permit for the installation, modification, or repair of a combined system transfers with the title to the property in a real estate transaction. The title may not be encumbered at the time of transfer by new permit requirements for a combined system that differ from the permitting requirements in effect at the time the system was permitted, modified, or repaired.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0065, F.S., relating to combined onsite sewage treatment and disposal systems.

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has a potentially insignificant positive fiscal impact on DOH as a result of receiving increased permit fees for combined systems.

2. Expenditures:

According to DOH, costs will be incurred to issue permits and conduct inspections of these combined systems. Revenue from fees covers approximately 60 percent of the program costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill has a potentially insignificant positive fiscal impact on local government-owned utilities that, under certain circumstances, will not have to put in sewer pipes to connect to properties that currently have septic tanks.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a potentially insignificant positive fiscal impact on homeowners that convert to a combined system since combined systems are generally cheaper than converting from septic to sewer systems.

However, according to DOH, permitting costs would include an evaluation of the existing system as well as any repair or modification needed. Tank pump outs and systems evaluations are expected to cost between \$300 and \$600 and repairs could range from \$1500 to \$5000.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOH has been granted general rulemaking authority to implement the statutes pertaining to OSTDS.¹⁹ However, it appears that DOH will need to amend their rules to implement the provision in the bill establishing a specific permit for installing a combined-system and permit fees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires DOH to approve the installation of a combined system when connection to a central sewer system results in the use of any part of an OSTDS. However, there may be certain situations where installation of a combined system may not be in the best interest of the public's health and safety. It appears that, under the bill, DOH may lack the discretion to decide whether to approve the installation of a combined system in these situations.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

¹⁹ Section 381.0065(3)(a), F.S.
STORAGE NAME: h1055.ANRS.DOCX
DATE: 3/11/2014

1 A bill to be entitled
 2 An act relating to onsite sewage treatment and
 3 disposal systems; amending s. 381.0065, F.S.;
 4 providing legislative intent; defining the term
 5 "combined system"; authorizing the Department of
 6 Health to establish and collect fees for combined
 7 systems; providing conditions for issuance of permits
 8 relating to such systems; providing an effective date.

9

10 Be It Enacted by the Legislature of the State of Florida:

11

12 Section 1. Section 381.0065, Florida Statutes, is amended
 13 to read:

14 381.0065 Onsite sewage treatment and disposal systems;
 15 regulation.—

16 (1) LEGISLATIVE INTENT.—

17 (a) It is the intent of the Legislature that proper
 18 management of onsite sewage treatment and disposal systems is
 19 paramount to the health, safety, and welfare of the public.

20 (b) It is the intent of the Legislature that where a
 21 publicly owned or investor-owned sewerage system is not
 22 available, the department shall issue permits for the
 23 construction, installation, modification, abandonment, or repair
 24 of onsite sewage treatment and disposal systems under conditions
 25 as described in this section and rules adopted under this
 26 section. It is further the intent of the Legislature that the

27 installation and use of onsite sewage treatment and disposal
 28 systems not adversely affect the public health or significantly
 29 degrade the groundwater or surface water.

30 (c) It is the intent of the Legislature that where a
 31 publicly owned or investor-owned sewerage system is available,
 32 the department shall issue permits for the construction of a
 33 combined system when connection to the publicly owned or
 34 investor-owned sewerage system results in the use of any part of
 35 an onsite sewage treatment and disposal system.

36 (2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the
 37 term:

38 (a) "Available," as applied to a publicly owned or
 39 investor-owned sewerage system, means that the publicly owned or
 40 investor-owned sewerage system is capable of being connected to
 41 the plumbing of an establishment or residence, is not under a
 42 Department of Environmental Protection moratorium, and has
 43 adequate permitted capacity to accept the sewage to be generated
 44 by the establishment or residence; and:

45 1. For a residential subdivision lot, a single-family
 46 residence, or an establishment, any of which has an estimated
 47 sewage flow of 1,000 gallons per day or less, a gravity sewer
 48 line to maintain gravity flow from the property's drain to the
 49 sewer line, or a low pressure or vacuum sewage collection line
 50 in those areas approved for low pressure or vacuum sewage
 51 collection, exists in a public easement or right-of-way that
 52 abuts the property line of the lot, residence, or establishment.

53 2. For an establishment with an estimated sewage flow
 54 exceeding 1,000 gallons per day, a sewer line, force main, or
 55 lift station exists in a public easement or right-of-way that
 56 abuts the property of the establishment or is within 50 feet of
 57 the property line of the establishment as accessed via existing
 58 rights-of-way or easements.

59 3. For proposed residential subdivisions with more than 50
 60 lots, for proposed commercial subdivisions with more than 5
 61 lots, and for areas zoned or used for an industrial or
 62 manufacturing purpose or its equivalent, a sewerage system
 63 exists within one-fourth mile of the development as measured and
 64 accessed via existing easements or rights-of-way.

65 4. For repairs or modifications within areas zoned or used
 66 for an industrial or manufacturing purpose or its equivalent, a
 67 sewerage system exists within 500 feet of an establishment's or
 68 residence's sewer stub-out as measured and accessed via existing
 69 rights-of-way or easements.

70 (b)1. "Bedroom" means a room that can be used for sleeping
 71 and that:

72 a. For site-built dwellings, has a minimum of 70 square
 73 feet of conditioned space;

74 b. For manufactured homes, is constructed according to the
 75 standards of the United States Department of Housing and Urban
 76 Development and has a minimum of 50 square feet of floor area;

77 c. Is located along an exterior wall;

78 d. Has a closet and a door or an entrance where a door

79 | could be reasonably installed; and

80 | e. Has an emergency means of escape and rescue opening to
81 | the outside in accordance with the Florida Building Code.

82 | 2. A room may not be considered a bedroom if it is used to
83 | access another room except a bathroom or closet.

84 | 3. "Bedroom" does not include a hallway, bathroom,
85 | kitchen, living room, family room, dining room, den, breakfast
86 | nook, pantry, laundry room, sunroom, recreation room,
87 | media/video room, or exercise room.

88 | (c) "Blackwater" means that part of domestic sewage
89 | carried off by toilets, urinals, and kitchen drains.

90 | (d) "Combined system" means a system that includes any
91 | part of an onsite sewage and disposal system that is also
92 | connected to a publicly owned or investor-owned sewerage system
93 | regulated under chapter 403.

94 | (e)~~(d)~~ "Domestic sewage" means human body waste and
95 | wastewater, including bath and toilet waste, residential laundry
96 | waste, residential kitchen waste, and other similar waste from
97 | appurtenances at a residence or establishment.

98 | (f)~~(e)~~ "Graywater" means that part of domestic sewage that
99 | is not blackwater, including waste from the bath, lavatory,
100 | laundry, and sink, except kitchen sink waste.

101 | (g)~~(f)~~ "Florida Keys" means those islands of the state
102 | located within the boundaries of Monroe County.

103 | (h)~~(g)~~ "Injection well" means an open vertical hole at
104 | least 90 feet in depth, cased and grouted to at least 60 feet in

105 depth which is used to dispose of effluent from an onsite sewage
 106 treatment and disposal system.

107 (i)~~(h)~~ "Innovative system" means an onsite sewage
 108 treatment and disposal system that, in whole or in part, employs
 109 materials, devices, or techniques that are novel or unique and
 110 that have not been successfully field-tested under sound
 111 scientific and engineering principles under climatic and soil
 112 conditions found in this state.

113 (j)~~(i)~~ "Lot" means a parcel or tract of land described by
 114 reference to recorded plats or by metes and bounds, or the least
 115 fractional part of subdivided lands having limited fixed
 116 boundaries or an assigned number, letter, or any other legal
 117 description by which it can be identified.

118 (k)~~(j)~~ "Mean annual flood line" means the elevation
 119 determined by calculating the arithmetic mean of the elevations
 120 of the highest yearly flood stage or discharge for the period of
 121 record, to include at least the most recent 10-year period. If
 122 at least 10 years of data is not available, the mean annual
 123 flood line shall be as determined based upon the data available
 124 and field verification conducted by a certified professional
 125 surveyor and mapper with experience in the determination of
 126 flood water elevation lines or, at the option of the applicant,
 127 by department personnel. Field verification of the mean annual
 128 flood line shall be performed using a combination of those
 129 indicators listed in subparagraphs 1.-7. that are present on the
 130 site, and that reflect flooding that recurs on an annual basis.

131 In those situations where any one or more of these indicators
 132 reflect a rare or aberrant event, such indicator or indicators
 133 may ~~shall~~ not be used ~~utilized~~ in determining the mean annual
 134 flood line. The indicators that may be considered are:

- 135 1. Water stains on the ground surface, trees, and other
- 136 fixed objects;
- 137 2. Hydric adventitious roots;
- 138 3. Drift lines;
- 139 4. Rafted debris;
- 140 5. Aquatic mosses and liverworts;
- 141 6. Moss collars; and
- 142 7. Lichen lines.

143 (l) ~~(k)~~ "Onsite sewage treatment and disposal system" means
 144 a system that contains a standard subsurface, filled, or mound
 145 drainfield system; an aerobic treatment unit; a graywater system
 146 tank; a laundry wastewater system tank; a septic tank; a grease
 147 interceptor; a pump tank; a solids or effluent pump; a
 148 waterless, incinerating, or organic waste-composting toilet; or
 149 a sanitary pit privy that is installed or proposed to be
 150 installed beyond the building sewer on land of the owner or on
 151 other land to which the owner has the legal right to install a
 152 system. The term includes any item placed within, or intended to
 153 be used as a part of or in conjunction with, the system. This
 154 term does not include package sewage treatment facilities and
 155 other treatment works regulated under chapter 403.

156 (m) ~~(l)~~ "Permanent nontidal surface water body" means a

157 | perennial stream, a perennial river, an intermittent stream, a
 158 | perennial lake, a submerged marsh or swamp, a submerged wooded
 159 | marsh or swamp, a spring, or a seep, as identified on the most
 160 | recent quadrangle map, 7.5 minute series (topographic), produced
 161 | by the United States Geological Survey, or products derived from
 162 | that series. "Permanent nontidal surface water body" shall also
 163 | mean an artificial surface water body that does not have an
 164 | impermeable bottom and side and that is designed to hold, or
 165 | does hold, visible standing water for at least 180 days of the
 166 | year. However, a nontidal surface water body that is drained,
 167 | either naturally or artificially, where the intent or the result
 168 | is that such drainage be temporary, shall be considered a
 169 | permanent nontidal surface water body. A nontidal surface water
 170 | body that is drained of all visible surface water, where the
 171 | lawful intent or the result of such drainage is that such
 172 | drainage will be permanent, shall not be considered a permanent
 173 | nontidal surface water body. The boundary of a permanent
 174 | nontidal surface water body shall be the mean annual flood line.

175 | (n)~~(m)~~ "Potable water line" means any water line that is
 176 | connected to a potable water supply source, but the term does
 177 | not include an irrigation line with any of the following types
 178 | of backflow devices:

179 | 1. For irrigation systems into which chemicals are not
 180 | injected, any atmospheric or pressure vacuum breaker or double
 181 | check valve or any detector check assembly.

182 | 2. For irrigation systems into which chemicals such as

183 fertilizers, pesticides, or herbicides are injected, any reduced
 184 pressure backflow preventer.

185 (o)~~(n)~~ "Septage" means a mixture of sludge, fatty
 186 materials, human feces, and wastewater removed during the
 187 pumping of an onsite sewage treatment and disposal system.

188 (p)~~(e)~~ "Subdivision" means, for residential use, any tract
 189 or plot of land divided into two or more lots or parcels of
 190 which at least one is 1 acre or less in size for sale, lease, or
 191 rent. A subdivision for commercial or industrial use is any
 192 tract or plot of land divided into two or more lots or parcels
 193 of which at least one is 5 acres or less in size and which is
 194 for sale, lease, or rent. A subdivision shall be deemed to be
 195 proposed until such time as an application is submitted to the
 196 local government for subdivision approval or, in those areas
 197 where no local government subdivision approval is required,
 198 until such time as a plat of the subdivision is recorded.

199 (g)~~(e)~~ "Tidally influenced surface water body" means a
 200 body of water that is subject to the ebb and flow of the tides
 201 and has as its boundary a mean high-water line as defined by s.
 202 177.27(15).

203 (r)~~(g)~~ "Toxic or hazardous chemical" means a substance
 204 that poses a serious danger to human health or the environment.

205 (3) DUTIES AND POWERS OF THE DEPARTMENT OF HEALTH.—The
 206 department shall:

207 (a) Adopt rules to administer ss. 381.0065–381.0067,
 208 including definitions that are consistent with the definitions

209 | in this section, decreases to setback requirements where no
 210 | health hazard exists, increases for the lot-flow allowance for
 211 | performance-based systems, requirements for separation from
 212 | water table elevation during the wettest season, requirements
 213 | for the design and construction of any component part of an
 214 | onsite sewage treatment and disposal system, application and
 215 | permit requirements for persons who maintain an onsite sewage
 216 | treatment and disposal system, requirements for maintenance and
 217 | service agreements for aerobic treatment units and performance-
 218 | based treatment systems, and recommended standards, including
 219 | disclosure requirements, for voluntary system inspections to be
 220 | performed by individuals who are authorized by law to perform
 221 | such inspections and who shall inform a person having ownership,
 222 | control, or use of an onsite sewage treatment and disposal
 223 | system of the inspection standards and of that person's
 224 | authority to request an inspection based on all or part of the
 225 | standards.

226 | (b) Perform application reviews and site evaluations,
 227 | issue permits, and conduct inspections and complaint
 228 | investigations associated with the construction, installation,
 229 | maintenance, modification, abandonment, operation, use, or
 230 | repair of an onsite sewage treatment and disposal system for a
 231 | residence or establishment with an estimated domestic sewage
 232 | flow of 10,000 gallons or less per day, or an estimated
 233 | commercial sewage flow of 5,000 gallons or less per day, which
 234 | is not currently regulated under chapter 403.

235 (c) Develop a comprehensive program to ensure that onsite
 236 sewage treatment and disposal systems regulated by the
 237 department are sized, designed, constructed, installed,
 238 repaired, modified, abandoned, used, operated, and maintained in
 239 compliance with this section and rules adopted under this
 240 section to prevent groundwater contamination and surface water
 241 contamination and to preserve the public health. The department
 242 is the final administrative interpretive authority regarding
 243 rule interpretation. In the event of a conflict regarding rule
 244 interpretation, the State Surgeon General, or his or her
 245 designee, shall timely assign a staff person to resolve the
 246 dispute.

247 (d) Grant variances in hardship cases under the conditions
 248 prescribed in this section and rules adopted under this section.

249 (e) Permit the use of a limited number of innovative
 250 systems for a specific period ~~of time~~, when there is compelling
 251 evidence that the system will function properly and reliably to
 252 meet the requirements of this section and rules adopted under
 253 this section.

254 (f) Issue annual operating permits under this section.

255 (g) Establish and collect fees as established under s.
 256 381.0066 for services provided with respect to onsite sewage
 257 treatment and disposal systems and combined systems.

258 (h) Conduct enforcement activities, including imposing
 259 fines, issuing citations, suspensions, revocations, injunctions,
 260 and emergency orders for violations of this section, part I of

261 chapter 386, or part III of chapter 489 or for a violation of
 262 any rule adopted under this section, part I of chapter 386, or
 263 part III of chapter 489.

264 (i) Provide or conduct education and training of
 265 department personnel, service providers, and the public
 266 regarding onsite sewage treatment and disposal systems.

267 (j) Supervise research on, demonstration of, and training
 268 on the performance, environmental impact, and public health
 269 impact of onsite sewage treatment and disposal systems within
 270 this state. Research fees collected under s. 381.0066(2)(k) must
 271 be used to develop and fund hands-on training centers designed
 272 to provide practical information about onsite sewage treatment
 273 and disposal systems to septic tank contractors, master septic
 274 tank contractors, contractors, inspectors, engineers, and the
 275 public and must also be used to fund research projects which
 276 focus on improvements of onsite sewage treatment and disposal
 277 systems, including use of performance-based standards and
 278 reduction of environmental impact. Research projects shall be
 279 initially approved by the technical review and advisory panel
 280 and shall be applicable to and reflect the soil conditions
 281 specific to Florida. Such projects shall be awarded through
 282 competitive negotiation, using the procedures provided in s.
 283 287.055, to public or private entities that have experience in
 284 onsite sewage treatment and disposal systems in Florida and that
 285 are principally located in Florida. Research projects may ~~shall~~
 286 not be awarded to firms or entities that employ or are

287 associated with persons who serve on either the technical review
 288 and advisory panel or the research review and advisory
 289 committee.

290 (k) Approve the installation of individual graywater
 291 disposal systems in which blackwater is treated by a central
 292 sewerage system.

293 (l) Regulate and permit the sanitation, handling,
 294 treatment, storage, reuse, and disposal of byproducts from any
 295 system regulated under this chapter and not regulated by the
 296 Department of Environmental Protection.

297 (m) Permit and inspect portable or temporary toilet
 298 services and holding tanks. The department shall review
 299 applications, perform site evaluations, and issue permits for
 300 the temporary use of holding tanks, privies, portable toilet
 301 services, or any other toilet facility that is intended for use
 302 on a permanent or nonpermanent basis, including facilities
 303 placed on construction sites when workers are present. The
 304 department may specify standards for the construction,
 305 maintenance, use, and operation of any such facility for
 306 temporary use.

307 (n) Regulate and permit maintenance entities for
 308 performance-based treatment systems and aerobic treatment unit
 309 systems. To ensure systems are maintained and operated according
 310 to manufacturer's specifications and designs, the department
 311 shall establish by rule minimum qualifying criteria for
 312 maintenance entities. The criteria shall include: training,

313 access to approved spare parts and components, access to
 314 manufacturer's maintenance and operation manuals, and service
 315 response time. The maintenance entity shall employ a contractor
 316 licensed under s. 489.105(3)(m), or part III of chapter 489, or
 317 a state-licensed wastewater plant operator, who is responsible
 318 for maintenance and repair of all systems under contract.

319 (o) Approve the installation of a combined system when
 320 connection to a publicly owned or investor-owned sewerage system
 321 results in the use of any part of an onsite sewage and disposal
 322 system.

323 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may
 324 not construct, repair, modify, abandon, or operate an onsite
 325 sewage treatment and disposal system or combined system without
 326 first obtaining a permit approved by the department. The
 327 department may issue permits to carry out this section, but may
 328 ~~shall~~ not make the issuance of such permits contingent upon
 329 prior approval by the Department of Environmental Protection,
 330 except that the issuance of a permit for work seaward of the
 331 coastal construction control line established under s. 161.053
 332 shall be contingent upon receipt of any required coastal
 333 construction control line permit from the Department of
 334 Environmental Protection and the construction of a combined
 335 system shall be contingent upon approval of the receiving force
 336 main system by the Department of Environmental Protection. A
 337 construction permit is valid for 18 months from the issuance
 338 date and may be extended by the department for one 90-day period

339 under rules adopted by the department. A repair permit is valid
 340 for 90 days from the date of issuance. An operating permit must
 341 be obtained before ~~prior to~~ the use of any aerobic treatment
 342 unit or if the establishment generates commercial waste.
 343 Buildings or establishments that use an aerobic treatment unit
 344 or generate commercial waste shall be inspected by the
 345 department at least annually to assure compliance with the terms
 346 of the operating permit. The operating permit for a commercial
 347 wastewater system is valid for 1 year from the date of issuance
 348 and must be renewed annually. The operating permit for an
 349 aerobic treatment unit is valid for 2 years from the date of
 350 issuance and must be renewed every 2 years. If all information
 351 pertaining to the siting, location, and installation conditions
 352 or repair of an onsite sewage treatment and disposal system
 353 remains the same, a construction or repair permit for the onsite
 354 sewage treatment and disposal system may be transferred to
 355 another person, if the transferee files, within 60 days after
 356 the transfer of ownership, an amended application providing all
 357 corrected information and proof of ownership of the property.
 358 There is no fee associated with the processing of this
 359 supplemental information. A person may not contract to
 360 construct, modify, alter, repair, service, abandon, or maintain
 361 any portion of an onsite sewage treatment and disposal system
 362 without being registered under part III of chapter 489. A
 363 property owner who personally performs construction,
 364 maintenance, or repairs to a system serving his or her own

365 owner-occupied single-family residence is exempt from
 366 registration requirements for performing such construction,
 367 maintenance, or repairs on that residence, but is subject to all
 368 permitting requirements. A municipality or political subdivision
 369 ~~of the state~~ may not issue a building or plumbing permit for any
 370 building that requires the use of an onsite sewage treatment and
 371 disposal system or combined system unless the owner or builder
 372 has received a construction permit for such system from the
 373 department. A building or structure may not be occupied and a
 374 municipality, political subdivision, or any state or federal
 375 agency may not authorize occupancy until the department approves
 376 the final installation of the onsite sewage treatment and
 377 disposal system or combined system. A municipality or political
 378 subdivision ~~of the state~~ may not approve any change in occupancy
 379 or tenancy of a building that uses an onsite sewage treatment
 380 and disposal system until the department has reviewed the use of
 381 the system with the proposed change, approved the change, and
 382 amended the operating permit.

383 (a) Subdivisions and lots in which each lot has a minimum
 384 area of at least one-half acre and either a minimum dimension of
 385 100 feet or a mean of at least 100 feet of the side bordering
 386 the street and the distance formed by a line parallel to the
 387 side bordering the street drawn between the two most distant
 388 points of the remainder of the lot may be developed with a water
 389 system regulated under s. 381.0062 and onsite sewage treatment
 390 and disposal systems, if ~~provided~~ the projected daily sewage

391 flow does not exceed an average of 1,500 gallons per acre per
 392 day, and if provided satisfactory drinking water can be obtained
 393 and all distance and setback, soil condition, water table
 394 elevation, and other related requirements of this section and
 395 rules adopted under this section can be met.

396 (b) Subdivisions and lots using a public water system as
 397 defined in s. 403.852 may use onsite sewage treatment and
 398 disposal systems, if provided there are no more than four lots
 399 per acre, if provided the projected daily sewage flow does not
 400 exceed an average of 2,500 gallons per acre per day, and if
 401 ~~provided that~~ all distance and setback, soil condition, water
 402 table elevation, and other related requirements that are
 403 generally applicable to the use of onsite sewage treatment and
 404 disposal systems are met.

405 (c) Notwithstanding paragraphs (a) and (b), for
 406 subdivisions platted of record on or before October 1, 1991,
 407 when a developer or other appropriate entity has previously made
 408 or makes provisions, including financial assurances or other
 409 commitments, acceptable to the Department of Health, that a
 410 central water system will be installed by a regulated public
 411 utility based on a density formula, private potable wells may be
 412 used with onsite sewage treatment and disposal systems until the
 413 agreed-upon densities are reached. In a subdivision regulated by
 414 this paragraph, the average daily sewage flow may not exceed
 415 2,500 gallons per acre per day. This section does not affect the
 416 validity of existing prior agreements. After October 1, 1991,

417 the exception provided under this paragraph is not available to
 418 a developer or other appropriate entity.

419 (d) Paragraphs (a) and (b) do not apply to any proposed
 420 residential subdivision with more than 50 lots or to any
 421 proposed commercial subdivision with more than 5 lots where a
 422 publicly owned or investor-owned sewerage system is available.
 423 It is the intent of this paragraph not to allow development of
 424 additional proposed subdivisions in order to evade the
 425 requirements of this paragraph.

426 (e) Onsite sewage treatment and disposal systems must not
 427 be placed closer than:

- 428 1. Seventy-five feet from a private potable well.
- 429 2. Two hundred feet from a public potable well serving a
 430 residential or nonresidential establishment having a total
 431 sewage flow of greater than 2,000 gallons per day.
- 432 3. One hundred feet from a public potable well serving a
 433 residential or nonresidential establishment having a total
 434 sewage flow of less than or equal to 2,000 gallons per day.
- 435 4. Fifty feet from any nonpotable well.
- 436 5. Ten feet from any storm sewer pipe, to the maximum
 437 extent possible, but in no instance shall the setback be less
 438 than 5 feet.
- 439 6. Seventy-five feet from the mean high-water line of a
 440 tidally influenced surface water body.
- 441 7. Seventy-five feet from the mean annual flood line of a
 442 permanent nontidal surface water body.

443 8. Fifteen feet from the design high-water line of
444 retention areas, detention areas, or swales designed to contain
445 standing or flowing water for less than 72 hours after a
446 rainfall or the design high-water level of normally dry drainage
447 ditches or normally dry individual lot stormwater retention
448 areas.

449 (f) Except as provided under paragraphs (e) and (t), ~~no~~
450 limitations may not shall be imposed by rule, relating to the
451 distance between an onsite disposal system and any area that
452 either permanently or temporarily has visible surface water.

453 (g) ~~All provisions of~~ This section and rules adopted under
454 this section relating to soil condition, water table elevation,
455 distance, and other setback requirements must be equally applied
456 to all lots, with the following exceptions:

457 1. Any residential lot that was platted and recorded on or
458 after January 1, 1972, or that is part of a residential
459 subdivision that was approved by the appropriate permitting
460 agency on or after January 1, 1972, and that was eligible for an
461 onsite sewage treatment and disposal system construction permit
462 on the date of such platting and recording or approval shall be
463 eligible for an onsite sewage treatment and disposal system
464 construction permit, regardless of when the application for a
465 permit is made. If rules in effect at the time the permit
466 application is filed cannot be met, residential lots platted and
467 recorded or approved on or after January 1, 1972, shall, to the
468 maximum extent possible, comply with the rules in effect at the

469 time the permit application is filed. At a minimum, however,
 470 those residential lots platted and recorded or approved on or
 471 after January 1, 1972, but before January 1, 1983, shall comply
 472 with those rules in effect on January 1, 1983, and those
 473 residential lots platted and recorded or approved on or after
 474 January 1, 1983, shall comply with those rules in effect at the
 475 time of such platting and recording or approval. In determining
 476 the maximum extent of compliance with current rules that is
 477 possible, the department shall allow structures and
 478 appurtenances thereto which were authorized at the time such
 479 lots were platted and recorded or approved.

480 2. Lots platted before 1972 are subject to a 50-foot
 481 minimum surface water setback and are not subject to lot size
 482 requirements. The projected daily flow for onsite sewage
 483 treatment and disposal systems for lots platted before 1972 may
 484 not exceed:

485 a. Two thousand five hundred gallons per acre per day for
 486 lots served by public water systems as defined in s. 403.852.

487 b. One thousand five hundred gallons per acre per day for
 488 lots served by water systems regulated under s. 381.0062.

489 (h)1. The department may grant variances in hardship cases
 490 which may be less restrictive than the provisions specified in
 491 this section. If a variance is granted and the onsite sewage
 492 treatment and disposal system construction permit has been
 493 issued, the variance may be transferred with the system
 494 construction permit, if the transferee files, within 60 days

495 after the transfer of ownership, an amended construction permit
 496 application providing all corrected information and proof of
 497 ownership of the property and if the same variance would have
 498 been required for the new owner of the property as was
 499 originally granted to the original applicant for the variance.
 500 There is no fee associated with the processing of this
 501 supplemental information. A variance may not be granted under
 502 this section until the department is satisfied that:

503 a. The hardship was not caused intentionally by the action
 504 of the applicant;

505 b. No reasonable alternative, taking into consideration
 506 factors such as cost, exists for the treatment of the sewage;
 507 and

508 c. The discharge from the onsite sewage treatment and
 509 disposal system will not adversely affect the health of the
 510 applicant or the public or significantly degrade the groundwater
 511 or surface waters.

512
 513 Where soil conditions, water table elevation, and setback
 514 provisions are determined by the department to be satisfactory,
 515 special consideration must be given to those lots platted before
 516 1972.

517 2. The department shall appoint and staff a variance
 518 review and advisory committee, which shall meet monthly to
 519 recommend agency action on variance requests. The committee
 520 shall make its recommendations on variance requests at the

521 meeting in which the application is scheduled for consideration,
 522 except for an extraordinary change in circumstances, the receipt
 523 of new information that raises new issues, or when the applicant
 524 requests an extension. The committee shall consider the criteria
 525 in subparagraph 1. in its recommended agency action on variance
 526 requests and shall also strive to allow property owners the full
 527 use of their land where possible. The committee consists of the
 528 following:

- 529 a. The State Surgeon General or his or her designee.
- 530 b. A representative from the county health departments.
- 531 c. A representative from the home building industry
 532 recommended by the Florida Home Builders Association.
- 533 d. A representative from the septic tank industry
 534 recommended by the Florida Onsite Wastewater Association.
- 535 e. A representative from the Department of Environmental
 536 Protection.
- 537 f. A representative from the real estate industry who is
 538 also a developer in this state who develops lots using onsite
 539 sewage treatment and disposal systems, recommended by the
 540 Florida Association of Realtors.
- 541 g. A representative from the engineering profession
 542 recommended by the Florida Engineering Society.

543
 544 Members shall be appointed for a term of 3 years, with such
 545 appointments being staggered so that the terms of no more than
 546 two members expire in any one year. Members shall serve without

547 remuneration, but if requested, shall be reimbursed for per diem
 548 and travel expenses as provided in s. 112.061.

549 (i) A construction permit may not be issued for an onsite
 550 sewage treatment and disposal system in any area zoned or used
 551 for industrial or manufacturing purposes, or its equivalent,
 552 where a publicly owned or investor-owned sewage treatment system
 553 is available, or where a likelihood exists that the system will
 554 receive toxic, hazardous, or industrial waste. An existing
 555 onsite sewage treatment and disposal system may be repaired if a
 556 publicly owned or investor-owned sewerage system is not
 557 available within 500 feet of the building sewer stub-out and if
 558 system construction and operation standards can be met. This
 559 paragraph does not require publicly owned or investor-owned
 560 sewerage treatment systems to accept anything other than
 561 domestic wastewater.

562 1. A building located in an area zoned or used for
 563 industrial or manufacturing purposes, or its equivalent, when
 564 such building is served by an onsite sewage treatment and
 565 disposal system, must not be occupied until the owner or tenant
 566 has obtained written approval from the department. The
 567 department may ~~shall~~ not grant approval when the proposed use of
 568 the system is to dispose of toxic, hazardous, or industrial
 569 wastewater or toxic or hazardous chemicals.

570 2. Each person who owns or operates a business or facility
 571 in an area zoned or used for industrial or manufacturing
 572 purposes, or its equivalent, or who owns or operates a business

573 that has the potential to generate toxic, hazardous, or
 574 industrial wastewater or toxic or hazardous chemicals, and uses
 575 an onsite sewage treatment and disposal system that is installed
 576 on or after July 5, 1989, must obtain an annual system operating
 577 permit from the department. A person who owns or operates a
 578 business that uses an onsite sewage treatment and disposal
 579 system that was installed and approved before July 5, 1989, does
 580 not need to ~~not~~ obtain a system operating permit. However, upon
 581 change of ownership or tenancy, the new owner or operator must
 582 notify the department of the change, and the new owner or
 583 operator must obtain an annual system operating permit,
 584 regardless of the date that the system was installed or
 585 approved.

586 3. The department shall periodically review and evaluate
 587 the continued use of onsite sewage treatment and disposal
 588 systems in areas zoned or used for industrial or manufacturing
 589 purposes, or its equivalent, and may require the collection and
 590 analyses of samples from within and around such systems. If the
 591 department finds that toxic or hazardous chemicals or toxic,
 592 hazardous, or industrial wastewater have been or are being
 593 disposed of through an onsite sewage treatment and disposal
 594 system, the department shall initiate enforcement actions
 595 against the owner or tenant to ensure adequate cleanup,
 596 treatment, and disposal.

597 (j) An onsite sewage treatment and disposal system
 598 designed by a professional engineer registered in the state and

599 certified by such engineer as complying with performance
600 criteria adopted by the department must be approved by the
601 department subject to the following:

602 1. The performance criteria applicable to engineer-
603 designed systems must be limited to those necessary to ensure
604 that such systems do not adversely affect the public health or
605 significantly degrade the groundwater or surface water. Such
606 performance criteria shall include consideration of the quality
607 of system effluent, the proposed total sewage flow per acre,
608 wastewater treatment capabilities of the natural or replaced
609 soil, water quality classification of the potential surface-
610 water-receiving body, and the structural and maintenance
611 viability of the system for the treatment of domestic
612 wastewater. However, performance criteria shall address only the
613 performance of a system and not a system's design.

614 2. A person electing to use ~~utilize~~ an engineer-designed
615 system shall, upon completion of the system design, submit such
616 design, certified by a registered professional engineer, to the
617 county health department. The county health department may use
618 ~~utilize~~ an outside consultant to review the engineer-designed
619 system, with the actual cost of such review to be borne by the
620 applicant. Within 5 working days after receiving an engineer-
621 designed system permit application, the county health department
622 shall request additional information if the application is not
623 complete. Within 15 working days after receiving a complete
624 application for an engineer-designed system, the county health

625 department either shall issue the permit or, if it determines
 626 that the system does not comply with the performance criteria,
 627 shall notify the applicant of that determination and refer the
 628 application to the department for a determination as to whether
 629 the system should be approved, disapproved, or approved with
 630 modification. The department engineer's determination shall
 631 prevail over the action of the county health department. The
 632 applicant shall be notified in writing of the department's
 633 determination and of the applicant's rights to pursue a variance
 634 or seek review under ~~the provisions of~~ chapter 120.

635 3. The owner of an engineer-designed performance-based
 636 system must maintain a current maintenance service agreement
 637 with a maintenance entity permitted by the department. The
 638 maintenance entity shall inspect each system at least twice each
 639 year and shall report quarterly to the department on the number
 640 of systems inspected and serviced. The reports may be submitted
 641 electronically.

642 4. The property owner of an owner-occupied, single-family
 643 residence may be approved and permitted by the department as a
 644 maintenance entity for his or her own performance-based
 645 treatment system upon written certification from the system
 646 manufacturer's approved representative that the property owner
 647 has received training on the proper installation and service of
 648 the system. The maintenance service agreement must conspicuously
 649 disclose that the property owner has the right to maintain his
 650 or her own system and is exempt from contractor registration

651 requirements for performing construction, maintenance, or
 652 repairs on the system but is subject to all permitting
 653 requirements.

654 5. The property owner shall obtain a biennial system
 655 operating permit from the department for each system. The
 656 department shall inspect the system at least annually, or on
 657 such periodic basis as the fee collected permits, and may
 658 collect system-effluent samples if appropriate to determine
 659 compliance with the performance criteria. The fee for the
 660 biennial operating permit shall be collected beginning with the
 661 second year of system operation.

662 6. If an engineer-designed system fails to properly
 663 function or fails to meet performance standards, the system
 664 shall be re-engineered, if necessary, to bring the system into
 665 compliance with ~~the provisions of~~ this section.

666 (k) An innovative system may be approved in conjunction
 667 with an engineer-designed site-specific system which is
 668 certified by the engineer to meet the performance-based criteria
 669 adopted by the department.

670 (l) For the Florida Keys, the department shall adopt a
 671 special rule for the construction, installation, modification,
 672 operation, repair, maintenance, and performance of onsite sewage
 673 treatment and disposal systems which considers the unique soil
 674 conditions and water table elevations, densities, and setback
 675 requirements. On lots where a setback distance of 75 feet from
 676 surface waters, saltmarsh, and buttonwood association habitat

677 areas cannot be met, an injection well, approved and permitted
 678 by the department, may be used for disposal of effluent from
 679 onsite sewage treatment and disposal systems. The following
 680 additional requirements apply to onsite sewage treatment and
 681 disposal systems in Monroe County:

682 1. The county, each municipality, and those special
 683 districts established for the purpose of the collection,
 684 transmission, treatment, or disposal of sewage shall ensure, in
 685 accordance with the specific schedules adopted by the
 686 Administration Commission under s. 380.0552, the completion of
 687 onsite sewage treatment and disposal system upgrades to meet the
 688 requirements of this paragraph.

689 2. Onsite sewage treatment and disposal systems must cease
 690 discharge by December 31, 2015, or must comply with department
 691 rules and provide the level of treatment which, on a permitted
 692 annual average basis, produces an effluent that contains no more
 693 than the following concentrations:

- 694 a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.
- 695 b. Suspended Solids of 10 mg/l.
- 696 c. Total Nitrogen, expressed as N, of 10 mg/l or a
 697 reduction in nitrogen of at least 70 percent. A system that has
 698 been tested and certified to reduce nitrogen concentrations by
 699 at least 70 percent shall be deemed to be in compliance with
 700 this standard.
- 701 d. Total Phosphorus, expressed as P, of 1 mg/l.

702

703 In addition, onsite sewage treatment and disposal systems
 704 discharging to an injection well must provide basic disinfection
 705 as defined by department rule.

706 3. In areas not scheduled to be served by a central sewer,
 707 onsite sewage treatment and disposal systems must, by December
 708 31, 2015, comply with department rules and provide the level of
 709 treatment described in subparagraph 2.

710 4. In areas scheduled to be served by central sewer by
 711 December 31, 2015, if the property owner has paid a connection
 712 fee or assessment for connection to the central sewer system,
 713 the property owner may install a holding tank with a high water
 714 alarm or an onsite sewage treatment and disposal system that
 715 meets the following minimum standards:

716 a. The existing tanks must be pumped and inspected and
 717 certified as being watertight and free of defects in accordance
 718 with department rule; and

719 b. A sand-lined drainfield or injection well in accordance
 720 with department rule must be installed.

721 5. Onsite sewage treatment and disposal systems must be
 722 monitored for total nitrogen and total phosphorus concentrations
 723 as required by department rule.

724 6. The department shall enforce proper installation,
 725 operation, and maintenance of onsite sewage treatment and
 726 disposal systems pursuant to this chapter, including ensuring
 727 that the appropriate level of treatment described in
 728 subparagraph 2. is met.

729 7. The authority of a local government, including a
 730 special district, to mandate connection of an onsite sewage
 731 treatment and disposal system is governed by s. 4, chapter 99-
 732 395, Laws of Florida.

733 8. Notwithstanding any other provision of law, an onsite
 734 sewage treatment and disposal system installed after July 1,
 735 2010, in unincorporated Monroe County, excluding special
 736 wastewater districts, that complies with the standards in
 737 subparagraph 2. is not required to connect to a central sewer
 738 system until December 31, 2020.

739 (m) A ~~Ne~~ product sold in the state for use in onsite
 740 sewage treatment and disposal systems may not contain any
 741 substance in concentrations or amounts that would interfere with
 742 or prevent the successful operation of such system, or that
 743 would cause discharges from such systems to violate applicable
 744 water quality standards. The department shall publish criteria
 745 for products known or expected to meet the conditions of this
 746 paragraph. In the event a product does not meet such criteria,
 747 such product may be sold if the manufacturer satisfactorily
 748 demonstrates to the department that the conditions of this
 749 paragraph are met.

750 (n) Evaluations for determining the seasonal high-water
 751 table elevations or the suitability of soils for the use of a
 752 new onsite sewage treatment and disposal system shall be
 753 performed by department personnel, professional engineers
 754 registered in the state, or such other persons with expertise,

755 as defined by rule, in making such evaluations. Evaluations for
 756 determining mean annual flood lines shall be performed by those
 757 persons identified in paragraph (2)(j). The department shall
 758 accept evaluations submitted by professional engineers and such
 759 other persons as meet the expertise established by this section
 760 or by rule unless the department has a reasonable scientific
 761 basis for questioning the accuracy or completeness of the
 762 evaluation.

763 (o) The department shall appoint a research review and
 764 advisory committee, which shall meet at least semiannually. The
 765 committee shall advise the department on directions for new
 766 research, review and rank proposals for research contracts, and
 767 review draft research reports and make comments. The committee
 768 is comprised of:

- 769 1. A representative of the State Surgeon General, or his
 770 or her designee.
- 771 2. A representative from the septic tank industry.
- 772 3. A representative from the home building industry.
- 773 4. A representative from an environmental interest group.
- 774 5. A representative from the State University System, from
 775 a department knowledgeable about onsite sewage treatment and
 776 disposal systems.
- 777 6. A professional engineer registered in this state who
 778 has work experience in onsite sewage treatment and disposal
 779 systems.
- 780 7. A representative from local government who is

781 knowledgeable about domestic wastewater treatment.

782 8. A representative from the real estate profession.

783 9. A representative from the restaurant industry.

784 10. A consumer.

785

786 Members shall be appointed for a term of 3 years, with the
 787 appointments being staggered so that the terms of no more than
 788 four members expire in any one year. Members shall serve without
 789 remuneration, but are entitled to reimbursement for per diem and
 790 travel expenses as provided in s. 112.061.

791 (p) An application for an onsite sewage treatment and
 792 disposal system permit shall be completed in full, signed by the
 793 owner or the owner's authorized representative, or by a
 794 contractor licensed under chapter 489, and shall be accompanied
 795 by all required exhibits and fees. ~~No~~ Specific documentation of
 796 property ownership may not ~~shall~~ be required as a prerequisite
 797 to the review of an application or the issuance of a permit. The
 798 issuance of a permit does not constitute determination by the
 799 department of property ownership.

800 (q) The department may not require any form of subdivision
 801 analysis of property by an owner, developer, or subdivider
 802 before ~~prior to~~ submission of an application for an onsite
 803 sewage treatment and disposal system.

804 (r) ~~Nothing in~~ This section does not limit ~~limits~~ the
 805 power of a municipality or county to enforce other laws for the
 806 protection of the public health and safety.

807 (s) In the siting of onsite sewage treatment and disposal
 808 systems, including drainfields, shoulders, and slopes, guttering
 809 may ~~shall~~ not be required on single-family residential dwelling
 810 units for systems located greater than 5 feet from the roof drip
 811 line of the house. If guttering is used on residential dwelling
 812 units, the downspouts shall be directed away from the
 813 drainfield.

814 (t) Notwithstanding ~~the provisions of~~ subparagraph (g)1.,
 815 onsite sewage treatment and disposal systems located in
 816 floodways of the Suwannee and Aucilla Rivers must adhere to the
 817 following requirements:

818 1. The absorption surface of the drainfield must ~~shall~~ not
 819 be subject to flooding based on 10-year flood elevations.

820 ~~Provided,~~ However, for lots or parcels created by the
 821 subdivision of land in accordance with applicable local
 822 government regulations before ~~prior to~~ January 17, 1990, if an
 823 applicant cannot construct a drainfield system with the
 824 absorption surface of the drainfield at an elevation equal to or
 825 above 10-year flood elevation, the department shall issue a
 826 permit for an onsite sewage treatment and disposal system within
 827 the 10-year floodplain of rivers, streams, and other bodies of
 828 flowing water if all of the following criteria are met:

- 829 a. The lot is at least one-half acre in size. +
- 830 b. The bottom of the drainfield is at least 36 inches
 831 above the 2-year flood elevation. + ~~and~~
- 832 c. The applicant installs either: a waterless,

833 incinerating, or organic waste composting toilet and a graywater
 834 system and drainfield in accordance with department rules; an
 835 aerobic treatment unit and drainfield in accordance with
 836 department rules; a system approved by the State Health Office
 837 that is capable of reducing effluent nitrate by at least 50
 838 percent; or a system approved by the county health department
 839 pursuant to department rule other than a system using
 840 alternative drainfield materials. The United States Department
 841 of Agriculture Soil Conservation Service soil maps, State of
 842 Florida Water Management District data, and Federal Emergency
 843 Management Agency Flood Insurance maps are resources that shall
 844 be used to identify flood-prone areas.

845 2. The use of fill or mounding to elevate a drainfield
 846 system out of the 10-year floodplain of rivers, streams, or
 847 other bodies of flowing water must ~~shall~~ not be permitted if
 848 such a system lies within a regulatory floodway of the Suwannee
 849 and Aucilla Rivers. In cases where the 10-year flood elevation
 850 does not coincide with the boundaries of the regulatory
 851 floodway, the regulatory floodway will be considered for the
 852 purposes of this subsection to extend at a minimum to the 10-
 853 year flood elevation.

854 (u)1. The owner of an aerobic treatment unit system shall
 855 maintain a current maintenance service agreement with an aerobic
 856 treatment unit maintenance entity permitted by the department.
 857 The maintenance entity shall inspect each aerobic treatment unit
 858 system at least twice each year and shall report quarterly to

859 the department on the number of aerobic treatment unit systems
 860 inspected and serviced. The reports may be submitted
 861 electronically.

862 2. The property owner of an owner-occupied, single-family
 863 residence may be approved and permitted by the department as a
 864 maintenance entity for his or her own aerobic treatment unit
 865 system upon written certification from the system manufacturer's
 866 approved representative that the property owner has received
 867 training on the proper installation and service of the system.
 868 The maintenance entity service agreement must conspicuously
 869 disclose that the property owner has the right to maintain his
 870 or her own system and is exempt from contractor registration
 871 requirements for performing construction, maintenance, or
 872 repairs on the system but is subject to all permitting
 873 requirements.

874 3. A septic tank contractor licensed under part III of
 875 chapter 489, if approved by the manufacturer, may not be denied
 876 access by the manufacturer to aerobic treatment unit system
 877 training or spare parts for maintenance entities. After the
 878 original warranty period, component parts for an aerobic
 879 treatment unit system may be replaced with parts that meet
 880 manufacturer's specifications but are manufactured by others.
 881 The maintenance entity shall maintain documentation of the
 882 substitute part's equivalency for 2 years and shall provide such
 883 documentation to the department upon request.

884 4. The owner of an aerobic treatment unit system shall

885 obtain a system operating permit from the department and allow
 886 the department to inspect during reasonable hours each aerobic
 887 treatment unit system at least annually, and such inspection may
 888 include collection and analysis of system-effluent samples for
 889 performance criteria established by rule of the department.

890 (v) The department may require the submission of detailed
 891 system construction plans that are prepared by a professional
 892 engineer registered in this state. The department shall
 893 establish by rule criteria for determining when such a
 894 submission is required.

895 (w) Any permit issued and approved by the department for
 896 the installation, modification, or repair of an onsite sewage
 897 treatment and disposal system or combined system shall transfer
 898 with the title to the property in a real estate transaction. A
 899 title may not be encumbered at the time of transfer by new
 900 permit requirements by a governmental entity for an onsite
 901 sewage treatment and disposal system or combined system which
 902 differ from the permitting requirements in effect at the time
 903 the system was permitted, modified, or repaired. An inspection
 904 of a system may not be mandated by a governmental entity at the
 905 point of sale in a real estate transaction. This paragraph does
 906 not affect a septic tank phase-out deferral program implemented
 907 by a consolidated government as defined in s. 9, Art. VIII of
 908 the State Constitution (1885).

909 (x) A governmental entity, including a municipality,
 910 county, or statutorily created commission, may not require an

911 engineer-designed performance-based treatment system, excluding
 912 a passive engineer-designed performance-based treatment system,
 913 before the completion of the Florida Onsite Sewage Nitrogen
 914 Reduction Strategies Project. This paragraph does not apply to a
 915 governmental entity, including a municipality, county, or
 916 statutorily created commission, which adopted a local law,
 917 ordinance, or regulation on or before January 31, 2012.
 918 Notwithstanding this paragraph, an engineer-designed
 919 performance-based treatment system may be used to meet the
 920 requirements of the variance review and advisory committee
 921 recommendations.

922 (y)1. An onsite sewage treatment and disposal system is
 923 not considered abandoned if the system is disconnected from a
 924 structure that was made unusable or destroyed following a
 925 disaster and if the system was properly functioning at the time
 926 of disconnection and was not adversely affected by the disaster.
 927 The onsite sewage treatment and disposal system may be
 928 reconnected to a rebuilt structure if:

929 a. The reconnection of the system is to the same type of
 930 structure which contains the same number of bedrooms or fewer,
 931 if the square footage of the structure is less than or equal to
 932 110 percent of the original square footage of the structure that
 933 existed before the disaster;

934 b. The system is not a sanitary nuisance; and

935 c. The system has not been altered without prior
 936 authorization.

937 2. An onsite sewage treatment and disposal system that
 938 serves a property that is foreclosed upon is not considered
 939 abandoned.

940 (z) If an onsite sewage treatment and disposal system
 941 permittee receives, relies upon, and undertakes construction of
 942 a system based upon a validly issued construction permit under
 943 rules applicable at the time of construction but a change to a
 944 rule occurs within 5 years after the approval of the system for
 945 construction but before the final approval of the system, the
 946 rules applicable and in effect at the time of construction
 947 approval apply at the time of final approval if fundamental site
 948 conditions have not changed between the time of construction
 949 approval and final approval.

950 (aa) An existing-system inspection or evaluation and
 951 assessment, or a modification, replacement, or upgrade of an
 952 onsite sewage treatment and disposal system is not required for
 953 a remodeling addition or modification to a single-family home if
 954 a bedroom is not added. However, a remodeling addition or
 955 modification to a single-family home may not cover any part of
 956 the existing system or encroach upon a required setback or the
 957 unobstructed area. To determine if a setback or the unobstructed
 958 area is impacted, the local health department shall review and
 959 verify a floor plan and site plan of the proposed remodeling
 960 addition or modification to the home submitted by a remodeler
 961 which shows the location of the system, including the distance
 962 of the remodeling addition or modification to the home from the

963 onsite sewage treatment and disposal system. The local health
 964 department may visit the site or otherwise determine the best
 965 means of verifying the information submitted. A verification of
 966 the location of a system is not an inspection or evaluation and
 967 assessment of the system. The review and verification must be
 968 completed within 7 business days after receipt by the local
 969 health department of a floor plan and site plan. If the review
 970 and verification is not completed within such time, the
 971 remodeling addition or modification to the single-family home,
 972 for the purposes of this paragraph, is approved.

973 (5) ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.-

974 (a) Department personnel who have reason to believe
 975 noncompliance exists, may at any reasonable time, enter the
 976 premises permitted under ss. 381.0065-381.0066, or the business
 977 premises of any septic tank contractor or master septic tank
 978 contractor registered under part III of chapter 489, or any
 979 premises that the department has reason to believe is being
 980 operated or maintained not in compliance, to determine
 981 compliance with ~~the provisions of~~ this section, part I of
 982 chapter 386, or part III of chapter 489 or rules or standards
 983 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
 984 part III of chapter 489. As used in this paragraph, the term
 985 "premises" does not include a residence or private building. To
 986 gain entry to a residence or private building, the department
 987 must obtain permission from the owner or occupant or secure an
 988 inspection warrant from a court of competent jurisdiction.

989 (b)1. The department may issue citations that may contain
 990 an order of correction or an order to pay a fine, or both, for
 991 violations of ss. 381.0065-381.0067, part I of chapter 386, or
 992 part III of chapter 489 or the rules adopted by the department,
 993 when a violation of these sections or rules is enforceable by an
 994 administrative or civil remedy, or when a violation of these
 995 sections or rules is a misdemeanor of the second degree. A
 996 citation issued under ss. 381.0065-381.0067, part I of chapter
 997 386, or part III of chapter 489 constitutes a notice of proposed
 998 agency action.

999 2. A citation must be in writing and must describe the
 1000 particular nature of the violation, including specific reference
 1001 to the ~~provisions of~~ law or rule allegedly violated.

1002 3. The fines imposed by a citation issued by the
 1003 department may not exceed \$500 for each violation. Each day the
 1004 violation exists constitutes a separate violation for which a
 1005 citation may be issued.

1006 4. The department shall inform the recipient, by written
 1007 notice pursuant to ss. 120.569 and 120.57, of the right to an
 1008 administrative hearing to contest the citation within 21 days
 1009 after the date the citation is received. The citation must
 1010 contain a conspicuous statement that if the recipient fails to
 1011 pay the fine within the time allowed, or fails to appear to
 1012 contest the citation after having requested a hearing, the
 1013 recipient has waived the recipient's right to contest the
 1014 citation and must pay an amount up to the maximum fine.

1015 5. The department may reduce or waive the fine imposed by
 1016 the citation. In determining whether to reduce or waive the
 1017 fine, the department must consider the gravity of the violation,
 1018 the person's attempts at correcting the violation, and the
 1019 person's history of previous violations including violations for
 1020 which enforcement actions were taken under ss. 381.0065-
 1021 381.0067, part I of chapter 386, part III of chapter 489, or
 1022 other ~~provisions~~ of law or rule.

1023 6. A ~~Any~~ person who willfully refuses to sign and accept a
 1024 citation issued by the department commits a misdemeanor of the
 1025 second degree, punishable as provided in s. 775.082 or s.
 1026 775.083.

1027 7. The department, pursuant to ss. 381.0065-381.0067, part
 1028 I of chapter 386, or part III of chapter 489, shall deposit any
 1029 fines it collects in the county health department trust fund for
 1030 use in providing services specified in those sections.

1031 8. This section provides an alternative means of enforcing
 1032 ss. 381.0065-381.0067, part I of chapter 386, and part III of
 1033 chapter 489. This section does not prohibit the department from
 1034 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part
 1035 III of chapter 489, or its rules, by any other means. However,
 1036 the department must elect to use only a single method of
 1037 enforcement for each violation.

1038 (6) LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective
 1039 January 1, 2016, the land application of septage from onsite
 1040 sewage treatment and disposal systems is prohibited.

HB 1055

2014

1041

Section 2. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
 2 Resources Subcommittee
 3 Representative Mayfield offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 381.00655, Florida Statutes, is amended
 8 to read:

9 381.00655 Connection of existing onsite sewage treatment
 10 and disposal systems to central sewerage system; requirements.-

11 (1)(a) The owner of a properly functioning onsite sewage
 12 treatment and disposal system, excluding an approved onsite
 13 graywater system, must connect the system or the building's
 14 plumbing to an available publicly owned or investor-owned
 15 sewerage system within 365 days after written notification by
 16 the owner of the publicly owned or investor-owned sewerage
 17 system that the system is available for connection. The publicly



Amendment No. 1

18 | owned or investor-owned sewerage system must notify the owner of
19 | the onsite sewage treatment and disposal system of the
20 | availability of the central sewerage system. No less than 1 year
21 | prior to the date the sewerage system will become available, the
22 | publicly owned or investor-owned sewerage system shall notify
23 | the affected owner of the onsite sewage treatment and disposal
24 | system of the anticipated availability of the sewerage system
25 | and shall also notify the owner that the owner will be required
26 | to connect to the sewerage system within 1 year of the actual
27 | availability. The owner shall have the option of prepaying the
28 | amortized value of required connection charges in equal monthly
29 | installments over a period not to exceed 2 years from the date
30 | of the initial notification of anticipated availability. Nothing
31 | in this section shall operate to impair contracts or other
32 | binding obligations relating to payment schedules in existence
33 | as of October 1, 1993. Nothing in this paragraph limits the
34 | power of a municipality or county to enforce other laws for the
35 | protection of the public health and safety.

36 | (b) The owner of an onsite sewage treatment and disposal
37 | system that needs repair or modification to function in a
38 | sanitary manner or to comply with the requirements of ss.
39 | 381.0065-381.0067 or rules adopted under those sections must
40 | connect to an available publicly owned or investor-owned
41 | sewerage system within 90 days after written notification from
42 | the department. In hardship cases, upon request of the owner,
43 | the department may approve an extension of not more than 90 days



Amendment No. 1

44 for sewerage connection. The department may approve only one
45 extension. This paragraph does not authorize the owner of the
46 onsite sewage treatment and disposal system to create or
47 maintain a sanitary nuisance.

48 (c) An existing onsite sewage treatment and disposal
49 system, including the drainfield, need not be required to be
50 abandoned if the Department of Environmental Protection or the
51 department's designee approves the use of all or a portion of
52 the existing onsite sewage treatment and disposal system as an
53 integral part of a sanitary sewer system.

54
55
56
57 -----
58 **T I T L E A M E N D M E N T**

59 Remove everything before the enacting clause and insert:

60
61 A bill to be entitled

62
63 An act relating to onsite sewage treatment and disposal systems;
64 amending s. 381.00655, F.S.; providing that an existing onsite
65 sewage treatment and disposal system need not be required to be
66 abandoned if the Department of Environmental Protection approves
67 the use of all or a portion of the existing onsite sewage
68 treatment and disposal system as an integral part of a sanitary
69 sewer system; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1113 Onsite Sewage Treatment and Disposal Systems

SPONSOR(S): Edwards and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1160

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Renner <i>JR</i>	Blalock <i>ARB</i>
2) Health Care Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Septage is defined as a mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping of an onsite sewage treatment and disposal system (septic tank). Approximately 100,000 onsite septic tanks are pumped each year, generating 100 million gallons of septage requiring treatment and disposal. The septage is treated and disposed of at a number of septage treatment facilities regulated by the Department of Health (DOH). The treated septage may then be spread over the land at DOH-regulated land application sites. In addition to septage, onsite systems serving restaurants include tanks that separate grease from the sewage stream and that grease is hauled, treated and land applied similarly to septage. There are currently 92 DOH-regulated land application sites that receive treated septage from 108 DOH-regulated septage treatment facilities. Approximately 40 percent of septage removed from septic tanks is treated at septage treatment facilities and then taken to the land application sites.

In 2010, the Legislature enacted a law prohibiting the land application of septage from septic tanks effective January 1, 2016.

The bill delays the effective date of the prohibition on the land application of septage from January 1, 2016 to January 1, 2020.

The bill delays the potential indeterminate negative fiscal impact on septic tank pumpers and septic haulers resulting from the increased cost of disposing of septage using alternative methods, the potential indeterminate negative fiscal impact on owners of septic tanks, and the potential insignificant negative impact on DOH resulting from the loss of permit revenues. The bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Septage is defined as a mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping of an onsite sewage treatment and disposal system (septic tank).¹ Approximately 100,000 septic tanks are pumped each year, generating 100 million gallons of septage requiring treatment and disposal.² The septage is treated and disposed of at a number of septage treatment facilities regulated by the Department of Health (DOH). The treated septage is then spread over the land at DOH-regulated land application sites.³ In addition to septage, onsite systems serving restaurants include tanks that separate grease from the sewage stream and that grease is hauled, treated and land applied similarly to septage. There are currently 92 DOH-regulated land application sites that receive treated septage from 108 DOH-regulated septage treatment facilities. Approximately 40 percent of septage removed from septic tanks is treated at septage treatment facilities and then taken to the land application sites.⁴

In 2010, the Legislature enacted a law⁵ prohibiting the land application of septage from septic tanks effective January 1, 2016.⁶ In addition, the bill required DOH, in consultation with the Department of Environmental Protection (DEP), to provide a report to the Governor and the Legislature recommending alternative methods to establish enhanced treatment levels for the land application of septage by February 1, 2011. The report, which was received on February 1, 2011, provided the following alternatives to the land application of septage as it is currently performed:⁷

- **Treatment of septage at domestic wastewater treatment facilities** – Treating septage takes advantage of available wastewater treatment facilities' capacity while at the same time centralizing waste treatment operations. However, accepting septage, which is a high strength waste, has the potential to upset wastewater treatment facilities processes and may result in a variety of increased operation and maintenance requirements and costs. Furthermore, the distance between central facilities with available treatment capacity and the locations where septage is collected in rural areas can make transport to such facilities cost prohibitive.
- **Disposal of septage at landfills** – Acceptance of septage at Class I landfills has positive impacts to the landfills because it increases microbial activity within the landfills and results in increased waste decomposition and more rapid waste stabilization. However, landfill instability may result due to disposal of the wet waste stream, and increased difficulty in operating compaction equipment may result due to creation of a slick working surface. Many landfills choose not to accept loads of septage, making land application sites one of the only available options for the disposal of septage.
- **Increasing the treatment level for land application** – The current practice of lime stabilization for two hours at a pH of 12 meets the federal regulations, so the necessity of higher levels of treatment is questionable.

¹ Section 381.0065(2)(n), F.S.

² See Department of Health, Report on Alternative Methods for the Treatment and Disposal of Septage, February 1, 2011, available at <http://www.doh.state.fl.us/environment/ostds/index.html>.

³ Criteria for the land application of septage may be found in ch. 64E-6.010, F.A.C.

⁴ See Department of Health, Report on Alternative Methods for the Treatment and Disposal of Septage, February 1, 2011, available at <http://www.doh.state.fl.us/environment/ostds/index.html>.

⁵ ch. 2010-205, L.O.F.

⁶ Section 381.0065(6), F.S.

⁷ Department of Health, Report on Alternative Methods for the Treatment and Disposal of Septage, February 1, 2011, available at <http://www.doh.state.fl.us/environment/ostds/index.html>.

- **Possible enhancements to existing land application practices** – Current land application rules meet the requirements for nutrient reduction and management under federal regulations. Any enhancement would be above what the EPA currently requires for septage management and land application. Possible enhancements include requiring third-party oversight of septage treatment and land application activities and changing operational procedures.

Other alternatives to the land application of septage are incineration, bioenergy production, and conversion to fertilizer, but these processes require larger capital investments.⁸

Effect of Proposed Changes

The bill delays the effective date of the prohibition on the land application of septage from January 1, 2016, to January 1, 2020.

B. SECTION DIRECTORY:

Section 1 amends s. 381.0065, F.S., delaying the effective date of the prohibition on the land application of septage from January 1, 2016, to January 1, 2020.

Section 2 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DOH currently permits 92 land application sites, with an annual fee of \$200 per site, resulting in a total of \$18,400 per year in revenues. When the prohibition takes effect in 2016 pursuant to current law, DOH will lose \$18,400 in revenue per year from these permitted sites. By delaying the effective date of the prohibition on the land application of septage, the bill also delays this potential insignificant negative fiscal impact on the state.

2. Expenditures:

The bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The land application of septage from septic tanks provides a method for disposal that is typically lower in cost than alternative methods. When the prohibition on land application takes effect in 2016 pursuant to current law, septic tank pumpers and septage haulers will have to find approved municipal wastewater treatment plants or facilities that receive biosolids, which typically cost more than land application due to driving distance and fees for disposal. These costs would likely result in higher pumpout costs to people who own septic tanks. By delaying the effective date of the prohibition on

⁸ *Id.*

land application of septage, the bill also delays the potential indeterminate negative fiscal impact on septic tank owners.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

HB 1113

2014

1 A bill to be entitled
2 An act relating to onsite sewage treatment and
3 disposal systems; amending s. 381.0065, F.S.; delaying
4 the effective date of the prohibition against the land
5 application of septage from onsite sewage treatment
6 and disposal systems; providing an effective date.

7

8 Be It Enacted by the Legislature of the State of Florida:

9

10 Section 1. Subsection (6) of section 381.0065, Florida
11 Statutes, is amended to read:

12 381.0065 Onsite sewage treatment and disposal systems;
13 regulation.—

14 (6) LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective
15 January 1, 2020 ~~2016~~, the land application of septage from
16 onsite sewage treatment and disposal systems is prohibited.

17 Section 2. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee

3 Representative Edwards offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. (1) The Department of Environmental
8 Protection, in consultation with the Department of Health, the
9 Department of Agriculture and Consumer Services Office of
10 Agricultural Water Policy, the University of Florida Institute
11 of Food and Agricultural Sciences, local governments, and
12 individuals representing domestic wastewater treatment
13 professionals, solid waste management professionals, onsite
14 wastewater treatment professionals, energy development
15 facilities, investor-owned utilities, and environmental
16 organizations, shall examine and report on the potential options



Amendment No. 1

17 for safely and appropriately disposing or reusing septage,
18 including, but not limited to:

19 (a) An inventory of domestic wastewater utilities and
20 solid waste management facilities that are known to receive and
21 treat septage.

22 (b) An inventory of permitted septage land application
23 sites.

24 (c) An analysis of the nutrient concentrations of septage.

25 (d) An analysis of the technical limitations for domestic
26 wastewater utilities and solid waste management facilities to
27 receive and treat septage.

28 (e) The transfer of regulatory authority over the land
29 application of septage from the Department of Health to the
30 Department of Environmental Protection, including the
31 environmental benefits of applying the nutrient management plan
32 requirements, setbacks, site-monitoring requirements, and
33 provisions of chapter 62-640, Florida Administrative Code, to
34 the land application of septage.

35 (2) The Department of Environmental Protection shall
36 submit a report of its findings and recommendations to the
37 Governor, the President of the Senate, and the Speaker of the
38 House of Representatives by March 1, 2015.

39 Section 2. This act shall take effect July 1, 2014.
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Amendment No. 1

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T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to onsite sewage treatment and disposal systems; directing the Department of Environmental Protection, in consultation with various entities and individuals, to examine potential options for safe and appropriate disposal or reuse of septage and submit a report to the Governor and the Legislature; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1123 Aquatic Preserves
SPONSOR(S): Porter
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Kaiser <i>JK</i>	Blalock <i>AFB</i>
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

In 1975, Florida enacted the Aquatic Preserve Act to ensure that state-owned submerged lands in areas with exceptional biological, aesthetic, and scientific value would be set aside forever as aquatic preserves for the benefit of future generations. The Department of Environmental Protection (DEP) currently manages 41 aquatic preserves in the state.

The bill creates the Nature Coast Aquatic Preserve (preserve), encompassing state-owned submerged lands, the water column upon those lands, and all publicly-owned islands in certain areas of Pasco, Hernando, and Citrus counties. The bill excludes privately-owned uplands unless the private landowner agrees to include those uplands in the preserve. The bill directs the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to maintain the preserve subject to restrictions on the following activities:

- Sales, transfers, or leases of the sovereign submerged lands.
- Drilling of wells, excavation for shell or minerals, or erection of structures other than docks.
- Seaward relocation of bulkhead lines or further establishment of bulkhead lines.
- Construction, replacement, or relocation of a seawall.
- Dredging or filling of submerged lands, which is not allowed except for the maintenance of existing marinas, piers, or docks.

The bill also authorizes the Board of Trustees to:

- Enter into agreements for establishing lines delineating sovereign submerged lands and privately-owned lands.
- Enter into agreements for the exchange of sovereign submerged lands for privately-owned lands.
- Accept gifts of land within or contiguous to the preserve.
- Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use.
- Conduct restoration and enhancement efforts in the preserve and its tributaries.
- Stabilize eroding shorelines of the preserve and its tributaries that are contributing to turbidity by planting natural vegetation and by the placement of riprap.
- Take any action convenient for, or necessary to, the accomplishment of any of these authorized acts.

The bill also specifies that the establishment and management of aquatic preserves may not infringe upon the riparian rights of upland property owners. The bill authorizes enforcement pursuant to the Environmental Protection Act, and authorizes the Department of Legal Affairs to bring a civil action with a penalty of \$5,000 per day against a person who violates the provisions of the bill. Lastly, the provisions in the bill are subject to the Florida Electrical Power Plant Siting Act.

The bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1123.ANRS.DOCX

DATE: 3/12/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Sovereign Submerged Lands

Upon attaining statehood in 1845, "the state of Florida by virtue of its sovereignty assumed title to and sovereignty over the navigable waters in the state and lands thereunder."¹ The title to lands under navigable waters passed from the United States to the state through operation of the federal "equal footing" doctrine,² and included the submerged bed up to the "ordinary high water mark" of navigable rivers and lakes.³

The Florida Constitution⁴ provides that:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters. Title to sovereign submerged lands is held by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees).⁵ The Board of Trustees is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state, including all sovereign submerged lands.⁶

Aquatic Preserves

In 1975, Florida enacted the Aquatic Preserve Act with the intent that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations. The Florida Statutes define an aquatic preserve as "an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition."⁷

The Department of Environmental Protection's (DEP) Office of Coastal and Aquatic Managed Areas (CAMA) oversees the management of Florida's 41 aquatic preserves, three National Estuarine Research Reserves (NERR), National Marine Sanctuary, and the Coral Reef Conservation Program. These protected areas comprise more than 2.2 million acres of the most valuable submerged lands and select coastal uplands in Florida. Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life, maintaining water quality, and providing habitat for shorebirds. The aquatic preserves are also valuable tourist destinations,

¹ Merrill-Stevens Co. v. Durkee, 62 Fla. 549, 57 So. 428, 432 (1912).

² Pollard v. Hagan, 44 U.S. 212 (1845).

³ Coastal Petroleum Co. v. American Cyanamid Co., 492 So. 2d 339, 342 (Fla 1986)

⁴ Art. X, s. 11 of the Florida Constitution.

⁵ DEP, Use of State-Owned Lands, <http://www.dep.state.fl.us/lands/submerged.htm>.

⁶ Section 253.03, F.S.

⁷ Section 258.37(1), F.S.

providing a host of outdoor activities such as fishing, diving, snorkeling, swimming, bird watching, and boating.⁸

Section 258.41, F.S., authorizes the Board of Trustees to establish areas to be included in the aquatic preserve system, subject to confirmation by the Legislature, and provides that an aquatic preserve cannot be withdrawn from the state aquatic preserve system except by an act of the Legislature.

The Legislature has also designated by law certain areas to be included in the aquatic preserve system. These include the following:

- Cockroach Bay Aquatic Preserve.
- Gasparilla Sound-Charlotte Harbor Aquatic Preserve.
- Lemon Bay Aquatic Preserve.
- Terra Ceia Aquatic Preserve.
- Guana River Marsh Aquatic Preserve.
- Big Bend Seagrasses Aquatic Preserve.
- Boca Ciega Bay Aquatic Preserve.
- Biscayne Bay Aquatic Preserve.
- Oklawaha River Aquatic Preserve.

Current law⁹ restricts certain activities, such as the construction of utility cables and pipes and spoil disposal, in aquatic preserves in order to conserve their unique biological, aesthetic, and scientific value. Section 258.42, F.S., directs the Board of Trustees to maintain aquatic preserves subject to the following requirements:

- No further sale, lease, or transfer of sovereign submerged lands may be approved or consummated by the Board of Trustees except when such sale, lease, or transfer is in the public interest.
- The Board of Trustees cannot approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve except when public road and bridge construction projects have no reasonable alternative and it is shown to be not contrary to the public interest.
- No further dredging or filling of submerged lands may be approved by the Board of Trustees except for certain activities that must be authorized pursuant to a permit.

DEP rules further provide that only minimal or maintenance dredging is permitted in a preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally. Minerals may not be mined (with the exception of oyster shells), and oil and gas well drilling is prohibited. However, the state is not prohibited from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the Board of Trustees. Docking facilities and structures for shore protection are restricted as to size and location.¹⁰

Florida Electrical Power Plant Siting Act

The Power Plant Siting Act (PPSA)¹¹ is the state's centralized process for licensing large power plants. DEP acts as the lead agency in the certification process, which replaces local and state permits. DEP

⁸ DEP, *Florida's Aquatic Preserves, Protecting our most Valued Resource: A Program Overview*, available at http://www.dep.state.fl.us/coastal/downloads/Aquatic_Preserve_Overview_Jun06.pdf.

⁹ Section 258.42, F.S.

¹⁰ Administrative rules applicable to aquatic preserves generally may be found in Chapters 18-20, F.A.C., Management Policies, Standards and Criteria. However, every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code.

¹¹ Sections 403.501-403.518, F.S.

along with local governments and state agencies within whose jurisdiction the power plant is to be built, participate in the certification process. The certification addresses permitting, land use and zoning, and property interests. A certification grants approval for the location of the power plant and its associated facilities such as a natural gas pipeline supplying the plant's fuel, rail lines for bringing coal to the site, and roadways and electrical transmission lines carrying power to the electrical grid, among others. As it relates to aquatic preserves, the PPSA specifically provides that the certification can exempt the applicant from state statutes or rules protecting aquatic preserves upon a finding that the public interests set forth in the PPSA override the public interest protected by the statute or rule.

The Nature Coast

"The Nature Coast" is located along Florida's Big Bend region and encompasses 980,000 acres across eight counties (Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla).¹² This area is a sanctuary for 19 endangered species¹³ and has many natural resources, including mangroves, spring fed rivers, limestone outcroppings, sandy beaches, oyster bars, mud flats, and seagrass beds.¹⁴

There are two designated aquatic preserves within the Nature Coast: the Big Bend Seagrass Aquatic Preserve, which extends from St. Marks to Cedar Key, and the St. Martins Marsh Aquatic Preserve, which extends from Crystal Bay through Homosassa Bay. The Nature Coast is bordered to the south by the Pinellas County Aquatic Preserve. The area between the Big Bend Seagrass Aquatic Preserve and the Pinellas County Aquatic Preserve, with the exception of the St. Martins Marsh Aquatic Preserve, is an undesignated shoreline consisting of Pasco, Hernando, and Citrus Counties. The aquatic preserve proposed by this legislation would lie between the St. Martins Aquatic Preserve and the Pinellas County Aquatic Preserve.

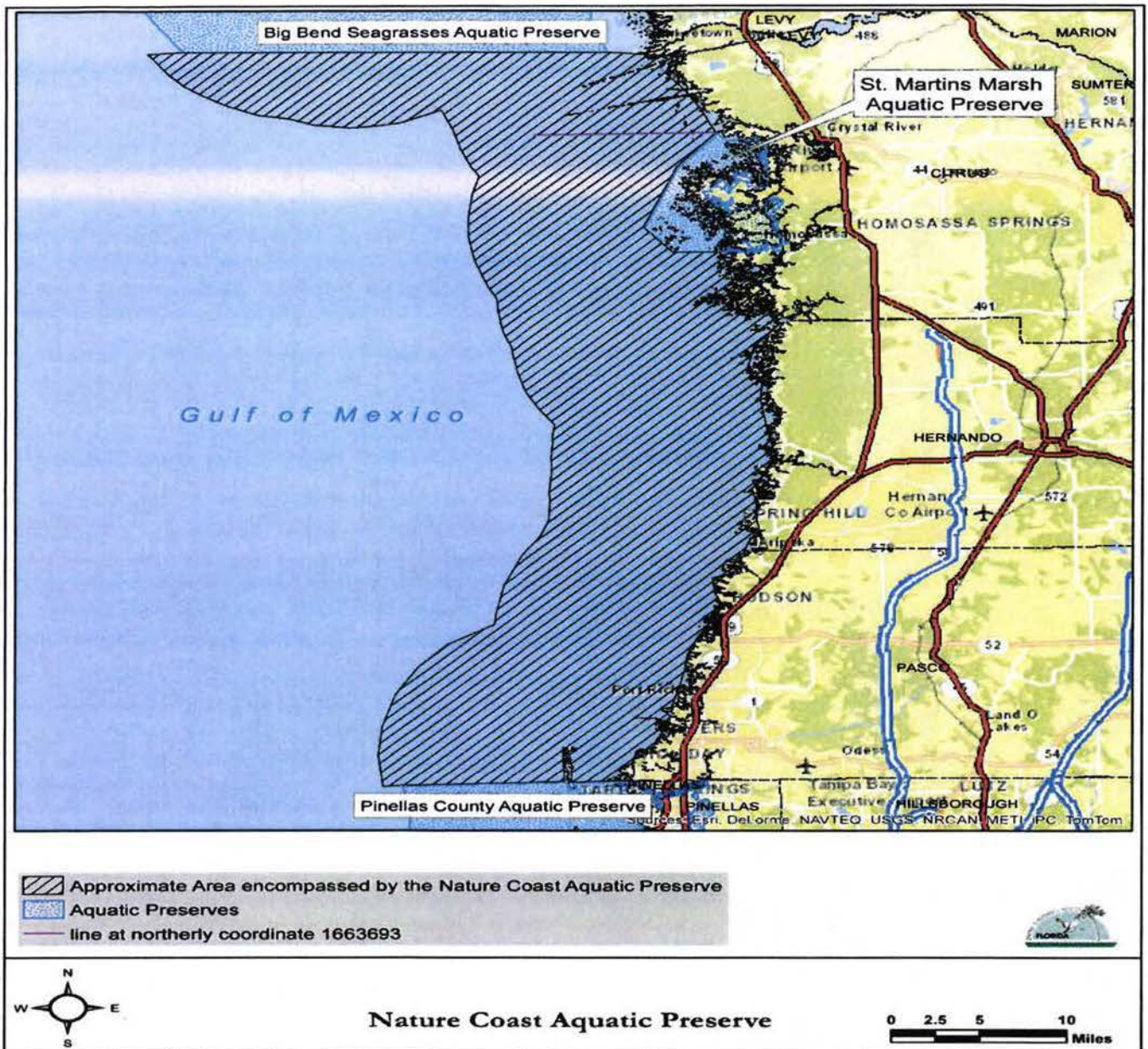
Effect of Proposed Changes

The bill establishes the Nature Coast Aquatic Preserve (preserve), and designates the boundaries of the preserve, which include state-owned submerged lands, the water column upon those lands, and all publicly-owned islands (see map below). The bill excludes privately-owned uplands unless the private landowner arranges to have his lands included in the preserve.

¹² Nature Coast Coalition, Nature Coast, <http://www.naturecoastcoalition.com/nchistory.htm>.

¹³ *Id.*

¹⁴ DEP, Senate Bill 1094 Agency Analysis.



The bill directs the Board of Trustees to maintain the preserve subject to the following:

- Further sales, transfers, or leases of the sovereign submerged lands may not be approved unless there is extreme hardship and the Board of Trustees determines that the sale, transfer, or lease is in the public interest.
- Further dredging or filling of submerged lands may not be approved except:
 - Minimal dredging and spoiling of submerged lands may be authorized for existing public navigation projects, as a public necessity, or for preservation of the preserve.
 - Other alterations of the physical conditions of submerged lands may be authorized as necessary to enhance the quality and utility of the preserve.
 - Minimum dredging and filling of submerged lands may be authorized for the maintenance of existing marinas, piers, or docks and their attendant navigation channels and access roads under certain circumstances.
 - Dredging of submerged lands may be authorized if the Board of Trustees determines that such dredging is necessary for eliminating conditions hazardous to the public health or for

eliminating stagnant waters, islands, and spoil banks and that such dredging would enhance the aesthetic and environmental quality and utility of the preserve.

- The Board of Trustees must give notice of dredging and filling before approving it.
- Drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve is prohibited.
- The Board of Trustees may not approve any seaward relocation of bulkhead lines or further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline.
- Construction, replacement, or relocation of a seawall is prohibited without the approval of the Board of Trustees, and may be granted only if riprap construction is used in the seawall. The Board of Trustees may grant approval through a letter of consent.

For lands lying within the preserve, the bill also authorizes the Board of Trustees to:

- Enter into agreements for and establish lines delineating sovereign submerged lands and privately owned lands.
- Enter into agreements for the exchange of sovereign submerged lands for privately owned lands.
- Accept gifts of land within or contiguous to the preserve.
- Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use.
- Conduct restoration and enhancement efforts in the preserve and its tributaries.
- Stabilize eroding shorelines of the preserve and its tributaries that are contributing to turbidity by planting natural vegetation and by the placement of riprap.¹⁵
- Take any action convenient for, or necessary to, the accomplishment of any of these authorized acts.

The bill requires the Board of Trustees to adopt and enforce rules to implement the bill's provisions and establish additional management criteria as necessary to accommodate special circumstances. The rules must also regulate human activity within the preserve in such a manner as to not unreasonably interfere with traditional public uses, such as sport fishing, commercial fishing, boating, and swimming.¹⁶

The bill further provides that the establishment and management of the preserve may not infringe upon the riparian rights of upland property owners adjacent to or within the preserve. In addition, the bill authorizes enforcement pursuant to the Environmental Protection Act,¹⁷ and authorizes the Department of Legal Affairs to bring a civil action with a penalty of \$5,000 per day against a person who violates the provisions of the bill.

B. SECTION DIRECTORY:

Section 1: Creates s. 258.3991, F.S., establishing the Nature Coast Aquatic Preserve.

Section 2: Provides an effective date of July 1, 2014.

¹⁵ According to Merriam-Webster On-Line Dictionary, "riprap" means a foundation or sustaining wall of stones or chunks of concrete thrown together without order (as in deep water); also : a layer of this or similar material on an embankment slope to prevent erosion.

¹⁶ According to DEP, Chapters 18-20, F.A.C., already include these provisions. Therefore, further rulemaking is unnecessary.

¹⁷ Section 403.412, F.S., is the Environmental Protection Act, which authorizes the Department of Legal Affairs, any political subdivision, or citizen of the state to maintain an action for injunctive relief against any agency with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By creating an aquatic preserve, the bill strengthens certain environmental requirements related to dredging and filling activities and the erection of structures other than docks, which may result in an indeterminate, negative fiscal impact to the private sector.

D. FISCAL COMMENTS:

The bill allows the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day for persons who violate provisions relating to the Nature Coast Aquatic Preserve.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill requires the Board of Trustees to adopt and enforce rules to implement the bill's provisions, provide additional preserve management criteria, and regulate human activity within the preserve. According to DEP, Chapters 18-20, F.A.C., already provide the Board of Trustees with rulemaking authority for these provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DEP, as drafted, the bill prohibits the construction of new docks, piers, and marinas within the boundaries of the Nature Coast Aquatic Preserve. Private riparian owners of uplands within the

proposed aquatic preserve are currently able to lease SSL for the construction of a new dock, but will no longer be able to enter into such a lease under the bill. This would be the only aquatic preserve where the leasing of SSL for this activity is not allowed. It is anticipated that the sponsor will file an amendment to address this issue.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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1 A bill to be entitled
 2 An act relating to aquatic preserves; creating s.
 3 258.3991, F.S.; creating the Nature Coast Aquatic
 4 Preserve; designating the preserve for inclusion in
 5 the aquatic preserve system; describing the boundaries
 6 of the preserve; outlining the authority of the Board
 7 of Trustees of the Internal Improvement Trust Fund in
 8 respect to the preserve; requiring the board to adopt
 9 rules to carry out this section; prohibiting the
 10 establishment and management of the preserve from
 11 infringing upon the riparian rights of upland property
 12 owners adjacent to or within the preserve; providing
 13 for enforcement and applicability; providing an
 14 effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 258.3991, Florida Statutes, is created
 19 to read:

20 258.3991 Nature Coast Aquatic Preserve.—

21 (1) DESIGNATION.—The following described area in Pasco,
 22 Hernando, and Citrus Counties is designated by the Legislature
 23 for inclusion in the aquatic preserve system under the Florida
 24 Aquatic Preserve Act of 1975 and shall be known as the "Nature
 25 Coast Aquatic Preserve." It is the intent of the Legislature
 26 that the Nature Coast Aquatic Preserve be preserved in an

27 essentially natural condition so that its biological and
 28 aesthetic value may endure for the enjoyment of future
 29 generations.

30 (2) BOUNDARIES.—

31 (a) For the purpose of this section, the Nature Coast
 32 Aquatic Preserve consists of the state-owned submerged lands
 33 lying west of the west right-of-way line of U.S. Highway 19
 34 within the boundaries of Pasco County, as described in s. 7.51,
 35 Hernando County, as described in s. 7.27, and Citrus County, as
 36 described in s. 7.09, to the south boundary of St. Martins Marsh
 37 Aquatic Preserve, as described in s. 258.39(20), and the
 38 westerly projection thereof, and also including all the state-
 39 owned submerged lands within Citrus County lying west of the
 40 west boundary of St. Martins Marsh Aquatic Preserve, lying north
 41 of the westerly projection of the south boundary of St. Martins
 42 Marsh Aquatic Preserve, and lying south of a line extending
 43 westerly along northerly coordinate 1663693 feet, Florida West
 44 Zone (NAD83).

45 (b) The Nature Coast Aquatic Preserve includes the
 46 submerged bottom lands, the water column upon such lands, and
 47 all publicly owned islands within the boundaries of the
 48 preserve. Any privately owned upland within the boundaries of
 49 the preserve is excluded. However, the board may negotiate an
 50 arrangement with the owner of any privately owned upland by
 51 which such upland may be included in the preserve.

52 (3) AUTHORITY OF TRUSTEES.—The board shall maintain the

53 Nature Coast Aquatic Preserve subject to the following:
 54 (a) Further sale, transfer, or lease of sovereignty
 55 submerged lands in the preserve may not be approved or
 56 consummated by the board, except upon a showing of extreme
 57 hardship on the part of the applicant and a determination by the
 58 board that such sale, transfer, or lease is in the public
 59 interest.
 60 (b) Further dredging or filling of submerged lands of the
 61 preserve may not be approved by the board except:
 62 1. Minimum dredging and spoiling of submerged lands may be
 63 authorized for existing public navigation projects, as a public
 64 necessity, or for preservation of the preserve according to the
 65 expressed intent of this section.
 66 2. Other alteration of the physical conditions of
 67 submerged lands, including the placement of riprap, may be
 68 authorized as necessary to enhance the quality and utility of
 69 the preserve.
 70 3. Minimum dredging and filling of submerged lands may be
 71 authorized for the maintenance of existing marinas, piers, or
 72 docks and their attendant navigation channels and access roads.
 73 Such projects may be authorized only upon a specific finding by
 74 the board that there is assurance that the project will be
 75 constructed and operated in a manner that will not adversely
 76 affect the water quality and utility of the preserve. This
 77 subparagraph does not authorize the connection of upland canals
 78 to the waters of the preserve.

79 4. Dredging of submerged lands may be authorized if the
 80 board determines that such dredging is necessary for eliminating
 81 conditions hazardous to the public health or for eliminating
 82 stagnant waters, islands, and spoil banks and that such dredging
 83 would enhance the aesthetic and environmental quality and
 84 utility of the preserve and is clearly in the public interest as
 85 determined by the board.

86 (c) Before approving any dredging or filling as provided
 87 in paragraph (b), the board must give public notice of such
 88 dredging or filling as required under s. 253.115.

89 (d) There may not be any drilling of wells, excavation for
 90 shell or minerals, or erection of structures other than docks
 91 within the preserve unless such activity is associated with an
 92 activity that is authorized under this section.

93 (e) The board may not approve any seaward relocation of
 94 bulkhead lines or further establishment of bulkhead lines except
 95 when a proposed bulkhead line is located at the line of mean
 96 high water along the shoreline. Construction, replacement, or
 97 relocation of a seawall is prohibited without the approval of
 98 the board, which may be granted only if riprap construction is
 99 used in the seawall. The board may grant approval under this
 100 paragraph by a letter of consent.

101 (f) Notwithstanding other provisions of this section, the
 102 board may, for lands lying within the Nature Coast Aquatic
 103 Preserve:

104 1. Enter into agreements for and establish lines

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105 delineating sovereignty lands and privately owned lands.

106 2. Enter into agreements for the exchange of, and
 107 exchange, sovereignty lands for privately owned lands.

108 3. Accept gifts of land within or contiguous to the
 109 preserve.

110 4. Negotiate or enter into agreements with owners of lands
 111 contiguous to public lands for any public or private use of such
 112 lands.

113 5. Take any action convenient for, or necessary to, the
 114 accomplishment of any of the acts and matters authorized under
 115 this paragraph.

116 6. Conduct restoration and enhancement efforts in the
 117 preserve and its tributaries.

118 7. Stabilize eroding shorelines of the preserve and its
 119 tributaries which are contributing to turbidity by planting
 120 natural vegetation to the greatest extent feasible and by the
 121 placement of riprap, as determined by Pasco, Hernando, and
 122 Citrus Counties in conjunction with the Department of
 123 Environmental Protection.

124 (4) RULES.—

125 (a) The board shall adopt and enforce reasonable rules to
 126 carry out this section and to provide:

127 1. Additional preserve management criteria as necessary to
 128 accommodate special circumstances.

129 2. Regulation of human activity within the preserve in
 130 such a manner as not to interfere unreasonably with lawful and

131 traditional public uses of the preserve, such as sport fishing,
 132 commercial fishing, boating, and swimming.

133 (b) Other uses of the preserve or human activity within
 134 the preserve, although not originally contemplated, may be
 135 authorized by the board, but only subsequent to a formal finding
 136 of compatibility with the purposes of this section.

137 (5) RIPARIAN RIGHTS.—The establishment or the management
 138 of the Nature Coast Aquatic Preserve may not operate to infringe
 139 upon the riparian rights of upland property owners adjacent to
 140 or within the preserve. Reasonable improvement for ingress and
 141 egress, mosquito control, shore protection, public utility
 142 expansion, and similar purposes may be authorized by the board
 143 or the Department of Environmental Protection, subject to any
 144 other applicable laws under the jurisdiction of other agencies.
 145 However, before approving any such improvements, the board or
 146 the department must give public notice as required under s.
 147 253.115.

148 (6) ENFORCEMENT.—This section may be enforced in
 149 accordance with s. 403.412. In addition, the Department of Legal
 150 Affairs may bring an action for civil penalties of \$5,000 per
 151 day against a person as defined in s. 1.01 who violates this
 152 section or any rule or regulation issued hereunder.

153 (7) APPLICABILITY.—This section is subject to the "Florida
 154 Electrical Power Plant Siting Act" as described in ss. 403.501-
 155 403.518.

156 Section 2. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Subcommittee
3 Representative Porter offered the following:

Amendment

6 Remove lines 71-72 and insert:
7 channels and access roads authorized for the creation and
8 maintenance of marinas, piers, or docks and the maintenance of
9 existing attendant navigation

10

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1363 Vessel Safety
SPONSOR(S): Van Zant
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Renner <i>JK</i>	Blalock <i>AFB</i>
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law prohibits a person from anchoring or operating a vessel in a manner that constitutes a navigational hazard or interferes with another vessel, except in the case of an emergency, and from carrying on any prohibited activity that constitutes a navigational hazard or interferes with another vessel. The Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers are authorized to remove, but not relocate, vessels deemed to be an interference or hazard to public safety. However, current law does not authorize the recovery of costs associated with the removal of such vessels.

FWC and its officers and all law enforcement officers are also authorized to remove, but not relocate, abandoned or derelict vessels from public waters where the vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment. All costs incurred by FWC or another law enforcement agency in the removal of any abandoned or derelict vessel are recoverable against the owner of the derelict vessel, and the Department of Legal Affairs is required to represent FWC in these actions. Any person who neglects or refuses to pay such costs is not entitled to be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid.

According to FWC, there is no provision in Florida law to authorize FWC or other law enforcement agencies to relocate vessels that create a navigation hazard or interfere with other vessels, or to relocate derelict vessels that obstruct or threatens to obstruct navigation or constitutes a danger to the environment.

The bill amends the vessel safety statutes to authorize FWC, officers of FWC, and any law enforcement agency or officer to relocate a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill exempts FWC and any other law enforcement agency or officer from liability for damages caused by the relocation or removal of a vessel. Furthermore, the bill authorizes FWC or another law enforcement agency to recover from the vessel owner all costs, including costs owed to a third party, resulting from the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill requires the Department of Legal Affairs to represent FWC in actions to recover such costs.

The bill also amends the public nuisance statutes to specify that, in addition to being authorized to remove a derelict vessel, FWC and certain law enforcement agencies or officers are authorized to relocate or cause to be relocated a derelict vessel from public waters if the derelict vessel poses a danger to the environment, property, or persons. The bill also exempts FWC or a law enforcement agency from liability for damages caused by the relocation or removal of a derelict vessel authorized by the bill. In addition, the bill authorizes FWC or other law enforcement agency to recover from the vessel owner all costs incurred by FWC or other law enforcement agency for relocating a derelict vessel, and specifies that all third-party costs that are incurred by the FWC or other law enforcement agency in the relocation or removal of the derelict vessel can be recovered from the vessel owner.

The bill has an insignificant positive fiscal impact on state and local governments that perform the removal or relocation of a derelict vessel because under the bill, the state and local law enforcement will be able to recover all costs incurred in the removal or relocation of certain vessels.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1363.ANRS.DOCX

DATE: 3/17/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 327, F.S., contains various provisions pertaining to vessel safety in Florida, and chapter 823, F.S., contains various provisions pertaining to public nuisance law in the state, which apply to derelict vessels that obstruct or threaten to obstruct navigation or poses a threat to the environment.

Vessels that Constitute a Navigational Hazard or Interfere with Another Vessel

The vessel safety statutes prohibit a person from anchoring or operating a vessel in a manner that constitutes a navigational hazard or interferes with another vessel, except in the case of an emergency, and from carrying on any prohibited activity that constitutes a navigational hazard or interferes with another vessel.¹ A "vessel" is defined as being synonymous with boat as referenced in Article VII, Section 1(b) of the Florida Constitution, and includes every description of watercraft, barge, and airboat, other than a seaplane on the water used or capable of being used as a means of transportation on the water.²

The Division of Law Enforcement of the Florida Fish and Wildlife Conservation Commission (FWC) and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers³ are authorized to *remove* vessels deemed to be an interference or hazard to public safety.⁴ Current law does not authorize the recovery of costs associated with the removal of such vessels.

In addition, the statutes do not authorize the FWC or other law enforcement agencies to *relocate* and attempt to secure a vessel in a more appropriate location if the vessel creates a navigational hazard or that interfere with other vessels. An unoccupied vessel may break free of its anchor or mooring and either remain adrift, come to rest in a location that is unsafe for other vessel traffic, or cause damage to other boats or maritime infrastructure. Relocating the vessel would benefit the boat owner, the operators and owners of boats in the area, and the owners of maritime infrastructure.⁵

Derelict Vessels

Florida's public nuisance statutes define a "derelict vessel" as any vessel that is left, stored, or abandoned:

- In a wrecked, junked, or substantially dismantled condition upon any public waters of the state;⁶
- At any port in the state without the consent of the agency having jurisdiction of the port;⁷ or

¹ Section 327.44, F.S.

² Section 327.02(39), F.S.

³ Pursuant to s. 943.10, F.S., a law enforcement officer is "any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency."

⁴ Section 327.70(1), F.S.

⁵ FWC Agency Analysis on file with staff.

⁶ Section 823.11(1)(a), F.S.

⁷ Section 823.11(1)(b), F.S.

- Docked or grounded at or beached upon the property of another without the consent of the owner of the property.⁸

It is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel in Florida, and it is a first degree misdemeanor⁹ to do so.¹⁰ In addition, anyone who stores, leaves, or abandons a derelict vessel is subject to a fine of up to \$50,000 per day.¹¹ A criminal conviction does not prevent the assessment of a civil penalty¹² and gives the court in charge of a criminal derelict vessel proceeding the power to impose a civil penalty.¹³

The FWC and its officers and all law enforcement officers are authorized to remove, but not relocate, an abandoned or derelict vessel from public waters where the vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment.¹⁴ All costs incurred by FWC or other law enforcement agency in the removal of any abandoned or derelict vessel are recoverable against the owner of the derelict vessel, and the Department of Legal Affairs is required to represent FWC in these actions.¹⁵ In addition, any person who neglects or refuses to pay such costs is not entitled to be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid.¹⁶

According to FWC,¹⁷ the removal of a derelict vessel costs an average of \$350 to \$450 per foot of vessel length. However, there are many variables that affect the costs of removing an individual vessel. Sunken vessels require professional divers and specialized equipment, resulting in costs in excess of the average. On the other hand, a floating vessel may be towed to a boat ramp or hoist and pulled from the water at much lower cost. Relocation may have no cost if a law enforcement officer is able to tow it to a suitable location. If professional towing services are called upon, costs in the neighborhood of \$200 per hour with a one-hour minimum (from the time the tow boat leaves their dock to the time they return) are standard. According to the At-Risk Vessel Statewide Database, a known total of 92 derelict vessels were removed in 2013 by local governments. Those local governments spent approximately \$325,000 on the removal of derelict vessels, resulting in an average of \$3,533 per vessel.

Effect of Proposed Changes

Vessels that Constitute a Navigational Hazard or Interfere with Another Vessel

The bill amends s. 327.44, F.S., authorizing FWC, officers of FWC, and any law enforcement agency or officer to relocate a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill exempts FWC and any other law enforcement agency or officer from liability for damages caused by the relocation or removal of a vessel. Furthermore, the bill authorizes FWC or another law enforcement agency to recover from the vessel owner all costs, including costs owed to a third party, resulting from the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The bill requires the Department of Legal Affairs to represent FWC in actions to recover the costs.

⁸ Section 823.11(1)(c), F.S.

⁹ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Section 823.11(4), F.S.

¹¹ Sections 376.15 and 376.16, F.S.

¹² See s. 376.16, F.S. This statute also gives the Department of Environmental Protection independent power to assess a civil penalty of up to \$50,000 per violation per day for storing, leaving, or abandoning a derelict vessel in Florida.

¹³ Section 823.11(4), F.S.

¹⁴ Section 823.11(2), F.S.

¹⁵ Section 823.11(3), F.S.

¹⁶ Section 823.11(3)(a), F.S.

¹⁷ *Id.*

Derelict Vessels

The bill amends s. 823.11, F.S., to specify that, in addition to being authorized to *remove* a derelict vessel, FWC and certain law enforcement agencies or officers are authorized to *relocate*, or cause to be relocated, a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or poses a danger to the environment, property or persons (current law allows removal of a derelict vessel that poses a danger to the environment). The bill also exempts FWC or any other law enforcement agency from liability for damages caused by such relocation or removal of a derelict vessel. In addition, the bill authorizes the recovery from the vessel owner of all costs incurred by FWC or another law enforcement agency for relocating a derelict vessel, and authorizes the recovery from the vessel owner of all costs owed to a third party that are incurred by the FWC or other law enforcement agency in the relocation or removal of the derelict vessel.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.44, F.S., relating to vessel interference with navigation.

Section 2. Amends s. 823.11, F.S., relating to the relocation and removal of derelict vessels.

Section 3. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

The bill may have an insignificant positive fiscal impact on FWC because, if a vessel must be removed or relocated, the bill requires the owner of a vessel to pay all costs incurred by the FWC in the removal or relocation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill may have an insignificant positive fiscal impact on local governments that remove or relocate certain vessels because the bill requires the owner of the vessel to pay all costs incurred in the removal or relocation of the vessel.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Vessel owners will be liable for all costs incurred by the FWC or a law enforcement agency and any third party costs associated with relocating or removing a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Exempting FWC and any law enforcement agency or officer from liability for any damage resulting from the relocation or removal of a vessel or derelict vessel is broad liability protection. It is unclear if this liability protection also applies to personal injury incurred by relocating or removing a derelict vessel. If so, the bill would provide total immunity for any action resulting in damage to a person or property. The bill sponsor plans to amend the bill to make FWC or local law enforcement liable only if they act in a grossly negligent manner when removing or relocating a vessel or derelict vessel as authorized under the bill and current law. In addition, s. 376.15, F.S., also pertains to the removal of derelict vessels and should be amended to include the limited liability revision discussed above, and include the authorization to recover third party costs. The bill sponsor also plans to make these changes to the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

27 therefor; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

30
31 Section 1. Section 327.44, Florida Statutes, is amended to
32 read:

33 327.44 Interference with navigation; relocation or
34 removal; recovery of costs.-

35 (1) No person shall anchor, operate, or permit to be
36 anchored, except in case of emergency, or operated a vessel or
37 carry on any prohibited activity in a manner which shall
38 unreasonably or unnecessarily constitute a navigational hazard
39 or interfere with another vessel. Anchoring under bridges or in
40 or adjacent to heavily traveled channels shall constitute
41 interference if unreasonable under the prevailing circumstances.

42 (2) The commission, officers of the commission, and any
43 law enforcement agency or officer specified in s. 327.70 are
44 authorized and empowered to relocate, remove, or cause to be
45 relocated or removed a vessel that unreasonably or unnecessarily
46 constitutes a navigational hazard or interferes with another
47 vessel. The commission and any other law enforcement agency or
48 officer acting under this subsection to relocate, remove, or
49 cause to be relocated or removed a vessel that unreasonably or
50 unnecessarily constitutes a navigational hazard or interferes
51 with another vessel shall be held harmless for all damages
52 resulting from such relocation or removal.

53 (3) All costs, including costs owed to a third party,
 54 incurred by the commission or other law enforcement agency in
 55 the relocation or removal of a vessel that unreasonably or
 56 unnecessarily constitutes a navigational hazard or interferes
 57 with another vessel are recoverable against the vessel owner.
 58 The Department of Legal Affairs shall represent the commission
 59 in actions to recover such costs.

60 Section 2. Section 823.11, Florida Statutes, is amended to
 61 read:

62 823.11 ~~Abandoned and~~ Derelict vessels; relocation and
 63 removal; penalty.—

64 (1) As used in this section, the term "derelict vessel"
 65 means a ~~any~~ vessel, as defined in s. 327.02, that is left,
 66 stored, or abandoned:

67 (a) In a wrecked, junked, or substantially dismantled
 68 condition upon any public waters of this state.

69 (b) At a ~~any~~ port in this state without the consent of the
 70 agency having jurisdiction thereof.

71 (c) Docked, ~~or~~ grounded, ~~at~~ or beached upon the property
 72 of another without the consent of the owner of the property.

73 (2) It is unlawful for a ~~any~~ person, firm, or corporation
 74 to store, leave, or abandon any derelict vessel ~~as defined in~~
 75 ~~this section~~ in this state.

76 (3) ~~(a)~~ The Fish and Wildlife Conservation Commission, and
 77 ~~its~~ officers of the commission, and any ~~all~~ law enforcement
 78 agency or officer ~~officers~~ as specified in s. 327.70 are

79 authorized and empowered to relocate, remove, or cause to be
 80 relocated or removed a ~~any abandoned or~~ derelict vessel from
 81 public waters if the derelict vessel ~~in any instance when the~~
 82 ~~same~~ obstructs or threatens to obstruct navigation or in any way
 83 constitutes a danger to the environment, property, or persons.
 84 The commission or any other law enforcement agency acting under
 85 this subsection to relocate, remove, or cause to be relocated or
 86 removed a derelict vessel from public waters shall be held
 87 harmless for all damages resulting from such relocation or
 88 removal.

89 (a) Removal of derelict vessels under ~~pursuant to~~ this
 90 subsection ~~section~~ may be funded by grants provided in ss.
 91 206.606 and 376.15. The Fish and Wildlife Conservation
 92 Commission shall ~~is directed to~~ implement a plan for the
 93 procurement of any available federal disaster funds and ~~to~~ use
 94 such funds for the removal of derelict vessels.

95 (b) All costs, including costs owed to a third party,
 96 incurred by the commission or other law enforcement agency in
 97 the relocation or removal of a ~~any abandoned or~~ derelict vessel
 98 are as set out above shall be recoverable against the vessel
 99 owner ~~thereof~~. The Department of Legal Affairs shall represent
 100 the commission in ~~such~~ actions to recover such costs. As
 101 provided in s. 705.103(4), a ~~any~~ person who neglects or refuses
 102 to pay such costs may ~~amount is not entitled to~~ be issued a
 103 certificate of registration for such vessel or for any other
 104 vessel or motor vehicle until such ~~the~~ costs have been paid.

105 (4)~~(b)~~ When a derelict vessel is docked, ~~or~~ grounded, ~~at~~
 106 or beached upon private property without the consent of the
 107 owner of the property, the owner of the property may remove the
 108 vessel at the vessel owner's expense 60 days after compliance
 109 with the notice requirements specified in s. 328.17(5). The
 110 private property owner may not hinder reasonable efforts by the
 111 vessel owner or the vessel owner's agent to remove the vessel.
 112 ~~Any~~ Notice given pursuant to this subsection is ~~paragraph~~ shall
 113 ~~be~~ presumed to be delivered when it is deposited with the United
 114 States Postal Service, certified, and properly addressed with
 115 prepaid postage.

116 (5)~~(4)~~ ~~A~~ ~~Any~~ person, firm, or corporation violating this
 117 section ~~act~~ commits a misdemeanor of the first degree and shall
 118 be punished as provided by law. A conviction under this section
 119 does ~~shall~~ not bar the assessment and collection of the civil
 120 penalty provided in s. 376.16 for violation of s. 376.15. The
 121 court having jurisdiction over the criminal offense,
 122 notwithstanding any jurisdictional limitations on the amount in
 123 controversy, may order the imposition of such civil penalty in
 124 addition to any sentence imposed for the first criminal offense.

125 Section 3. This act shall take effect July 1, 2014.



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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Agriculture & Natural
 2 Resources Subcommittee
 3 Representative Van Zant offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 327.44, Florida Statutes, is amended to
 8 read:

9 327.44 Interference with navigation; relocation or
 10 removal; recovery of costs.-

11 (1) No person shall anchor, operate, or permit to be
 12 anchored, except in case of emergency, or operated a vessel or
 13 carry on any prohibited activity in a manner which shall
 14 unreasonably or unnecessarily constitute a navigational hazard
 15 or interfere with another vessel. Anchoring under bridges or in
 16 or adjacent to heavily traveled channels shall constitute
 17 interference if unreasonable under the prevailing circumstances.



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18 (2) The commission, an officer of the commission, and any
19 law enforcement agency or officer specified in s. 327.70 is
20 authorized and empowered to relocate, remove, or cause to be
21 relocated or removed a vessel that unreasonably or unnecessarily
22 constitutes a navigational hazard or interferes with another
23 vessel. The commission or any other law enforcement agency or
24 officer acting under this subsection to relocate, remove, or
25 cause to be relocated or removed a vessel that unreasonably or
26 unnecessarily constitutes a navigational hazard or interferes
27 with another vessel shall be held harmless for all damages to
28 the vessel resulting from such relocation or removal, unless the
29 damage results from gross negligence or willful misconduct. As
30 used in this subsection:

31 (a) "Gross negligence" means that the defendant's conduct
32 was so reckless or wanting in care that it constituted a
33 conscious disregard or indifference to the safety of the
34 property exposed to such conduct.

35 (b) "Willful misconduct" means conduct evidencing
36 carelessness or negligence of such a degree or recurrence as to
37 manifest culpability, wrongful intent, or evil design or to show
38 an intentional and substantial disregard of the interests of the
39 vessel owner.

40 (3) All costs, including costs owed to a third party,
41 incurred by the commission or other law enforcement agency in
42 the relocation or removal of a vessel that unreasonably or
43 unnecessarily constitutes a navigational hazard or interferes



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44 with another vessel are recoverable against the vessel owner.
45 The Department of Legal Affairs shall represent the commission
46 in actions to recover such costs.

47 Section 2. Section 823.11, Florida Statutes, is amended to
48 read:

49 823.11 ~~Abandoned and~~ Derelict vessels; relocation or
50 removal; penalty.-

51 (1) As used in this section, the term:

52 (a) "Derelict vessel" means a any vessel, as defined in s.
53 327.02, that is left, stored, or abandoned:

54 1.(a) In a wrecked, junked, or substantially dismantled
55 condition upon any public waters of this state.

56 2.(b) At a any port in this state without the consent of
57 the agency having jurisdiction thereof.

58 3.(c) Docked, ~~or grounded,~~ at or beached upon the property
59 of another without the consent of the owner of the property.

60 (b) "Commission" means the Fish and Wildlife Conservation
61 Commission.

62 (2) It is unlawful for a any person, firm, or corporation
63 to store, leave, or abandon any derelict vessel ~~as defined in~~
64 ~~this section~~ in this state.

65 (3)(a) ~~The Fish and Wildlife Conservation commission, an~~
66 officer of the commission, and its officers and any all law
67 enforcement agency or officer ~~officers~~ as specified in s. 327.70
68 ~~is are~~ authorized and empowered to relocate, remove, or cause to
69 be relocated or removed ~~a any abandoned or~~ derelict vessel from



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70 public waters if the derelict vessel ~~in any instance when the~~
71 ~~same~~ obstructs or threatens to obstruct navigation or in any way
72 constitutes a danger to the environment, property, or persons.
73 The commission or any other law enforcement agency or officer
74 acting under this subsection to relocate, remove, or cause to be
75 relocated or removed a derelict vessel from public waters shall
76 be held harmless for all damages to the derelict vessel
77 resulting from such relocation or removal, unless the damage
78 results from gross negligence or willful misconduct.

79 (a) Removal of derelict vessels under ~~pursuant to~~ this
80 subsection ~~section~~ may be funded by grants provided in ss.
81 206.606 and 376.15. The Fish and Wildlife Conservation
82 Commission shall ~~is directed to~~ implement a plan for the
83 procurement of any available federal disaster funds and ~~to~~ use
84 such funds for the removal of derelict vessels.

85 (b) All costs, including costs owed to a third party,
86 incurred by the commission or other law enforcement agency in
87 the relocation or removal of a ~~any abandoned or~~ derelict vessel
88 are as set out above shall be recoverable against the vessel
89 owner ~~thereof~~. The Department of Legal Affairs shall represent
90 the commission in ~~such~~ actions to recover such costs. As
91 provided in s. 705.103(4), a ~~any~~ person who neglects or refuses
92 to pay such costs may amount ~~is not entitled to~~ be issued a
93 certificate of registration for such vessel or for any other
94 vessel or motor vehicle until such ~~the~~ costs have been paid.

95 (c) As used in this subsection:



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96 1. "Gross negligence" means that the defendant's conduct
97 was so reckless or wanting in care that it constituted a
98 conscious disregard or indifference to the safety of the
99 property exposed to such conduct.

100 2. "Willful misconduct" means conduct evidencing
101 carelessness or negligence of such a degree or recurrence as to
102 manifest culpability, wrongful intent, or evil design or to show
103 an intentional and substantial disregard of the interests of the
104 vessel owner.

105 (4)(b) When a derelict vessel is docked, ~~or~~ grounded, at
106 or beached upon private property without the consent of the
107 owner of the property, the owner of the property may remove the
108 vessel at the vessel owner's expense 60 days after compliance
109 with the notice requirements specified in s. 328.17(5). The
110 private property owner may not hinder reasonable efforts by the
111 vessel owner or the vessel owner's agent to remove the vessel.
112 ~~Any~~ Notice given pursuant to this subsection is ~~paragraph shall~~
113 ~~be~~ presumed to be delivered when it is deposited with the United
114 States Postal Service, certified, and properly addressed with
115 prepaid postage.

116 (5)(4) A ~~Any~~ person, firm, or corporation violating this
117 section ~~act~~ commits a misdemeanor of the first degree and shall
118 be punished as provided by law. A conviction under this section
119 does ~~shall~~ not bar the assessment and collection of the civil
120 penalty provided in s. 376.16 for violation of s. 376.15. The
121 court having jurisdiction over the criminal offense,



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122 notwithstanding any jurisdictional limitations on the amount in
123 controversy, may order the imposition of such civil penalty in
124 addition to any sentence imposed for the first criminal offense.

125 Section 3. Section 376.15, Florida Statutes, is amended to
126 read

127 376.15 Derelict vessels; relocation or removal from public
128 waters.-

129 (1) As used in this section, the term "commission" means
130 the Fish and Wildlife Conservation Commission.

131 (2)-(1) It is unlawful for any person, firm, or corporation
132 to store, leave, or abandon any derelict vessel as defined in s.
133 823.11(1) in this state.

134 (3)-(2)(a) The ~~Fish and Wildlife Conservation~~ commission
135 and its officers and all law enforcement officers as specified
136 in s. 327.70 are authorized and empowered to relocate or remove
137 any derelict vessel as defined in s. 823.11(1) from public
138 waters. All costs, including costs owed to a third party,
139 incurred by the commission or other law enforcement agency in
140 the relocation or removal of any abandoned or derelict vessel
141 shall be recoverable against the owner of the vessel. The
142 Department of Legal Affairs shall represent the commission in
143 such actions.

144 (b) The commission and any other law enforcement agency or
145 officer as specified in s. 327.70 acting under this section to
146 relocate, remove, or cause to be relocated or removed a derelict
147 vessel from public waters shall be held harmless for all damages

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148 to the derelict vessel resulting from such relocation or
149 removal, unless the damage results from gross negligence or
150 willful misconduct. As used in this paragraph:

151 1. "Gross negligence" means that the defendant's conduct
152 was so reckless or wanting in care that it constituted a
153 conscious disregard or indifference to the safety of the
154 property exposed to such conduct.

155 2. "Willful misconduct" means conduct evidencing
156 carelessness or negligence of such a degree or recurrence as to
157 manifest culpability, wrongful intent, or evil design or to show
158 an intentional and substantial disregard of the interests of the
159 vessel owner.

160 (c) ~~(b)~~ The commission may establish a program to provide
161 grants to local governments for the removal of derelict vessels
162 from the public waters of the state. The program shall be funded
163 from the Florida Coastal Protection Trust Fund. Notwithstanding
164 the provisions in s. 216.181(11), funds available for grants may
165 only be authorized by appropriations acts of the Legislature.

166 (d) ~~(e)~~ The commission shall adopt by rule procedures for
167 submitting a grant application and criteria for allocating
168 available funds. Such criteria shall include, but not be limited
169 to, the following:

170 1. The number of derelict vessels within the jurisdiction
171 of the applicant.

172 2. The threat posed by such vessels to public health or
173 safety, the environment, navigation, or the aesthetic condition



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174 of the general vicinity.

175 3. The degree of commitment of the local government to
176 maintain waters free of abandoned and derelict vessels and to
177 seek legal action against those who abandon vessels in the
178 waters of the state.

179 (e)~~(d)~~ This section shall constitute the authority for
180 such removal but is not intended to be in contravention of any
181 applicable federal act.

182 Section 4. This act shall take effect July 1, 2014.

183

184

185

T I T L E A M E N D M E N T

186

Remove everything before the enacting clause and insert:

187

A bill to be entitled

188

An act relating to vessel safety; amending s. 327.44,

189

F.S.; authorizing the Fish and Wildlife Conservation

190

Commission and certain law enforcement agencies or

191

officers to relocate or remove vessels that

192

unreasonably or unnecessarily constitute a navigation

193

hazard or interfere with another vessel; exempting the

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commission or a law enforcement agency or officer from

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liability for damages to a derelict vessel caused by

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the relocation or removal of such a vessel under

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certain circumstances; providing definitions;

198

providing that the commission or a law enforcement

199

agency may recover from the vessel owner its costs for



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200 the relocation or removal of such a vessel; requiring
201 the Department of Legal Affairs to represent the
202 commission in actions to recover such costs; amending
203 s. 823.11, F.S.; providing definitions; authorizing
204 the commission and certain law enforcement agencies
205 and officers to relocate or remove a derelict vessel
206 from public waters if such vessel poses a danger to
207 property or persons; exempting the commission or a law
208 enforcement agency or officer from liability for
209 damages caused by its relocation or removal of such a
210 vessel under certain circumstances; expanding costs
211 recoverable by the commission or a law enforcement
212 agency against the owner of a derelict vessel for the
213 relocation or removal of such vessel; abrogating the
214 power of the commission to remove certain abandoned
215 vessels and recover its costs therefor; providing
216 definitions; amending s. 376.15, F.S.; providing a
217 definition; authorizing relocation of derelict
218 vessels; exempting the commission or a law enforcement
219 agency or officer from liability for damages caused by
220 its relocation or removal of such a vessel under
221 certain circumstances; defining the terms "gross
222 negligence" and "willful misconduct"; providing an
223 effective date.